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ABSTRACT

The combined effect of the articles in this issue of "Inequality in Education" is to offer the reader a primer in bilingual/bicultural education. The articles which follow indicate that neither legislation nor court orders, correctly or incorrectly interpreted, can bring about effect change in this field on their own. What the bilingual movement needs at this point is the collective energy of advocates, parents, students, teachers, administrators, legislators, law enforcers, and other citizens. The research reported in the following articles was performed pursuant to a grant from the Office of Economic Opportunity: "Coming of Age in Bilingual/Bicultural Education: A Historical Perspective," Josue Gonzales; "Bilingual Education, Segregation, and a Third Alternative," Jose Cardenas; "Organizing for Bilingual Education: One Community's Experience," Aida Waserstein; "The Massachusetts Transitional Bilingual Education Act" Two Years After," Frederick P. Lewis; "The Massachusetts Transitional Bilingual Education Act" Problems in the Classroom and Possible Legislative Responses," Peter Roos and Emma Chavez Roos; "Training Teachers for Bilingual/Bicultural Education," Nelson Vieira; "Fox Point: The History of a Portuguses Bilingual Program," Laura Hersh Salganik; "Recent Legal Developments in Bilingual/Bicultural Education," Roger Rice. (Author/JM)

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BILINGUAL/BICULTURAL EDUCATION

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Contents

Josué González	5	Coming of Age in Bilingual/Bicultural Education: A Historical Perspective
Jose Cárdenas	19	Bilingual Education, Segregation, and A Third Alternative
Aida Waserstein	23	Organizing for Bilingual Education: One Community's Experience
Frederick P. Lewis	31	The Massachusetts Transitional Bilingual Education Act: Two Years After
Peter Roos and Emma Chavez Roos	38	The Massachusetts Transitional Bilingual Education Act: Problems in the Classroom and Possible Legislative Responses
Nelson Vieira	43	Training Teachers for Bilingual/Bicultural Education
Laura Hersh Salganik	47	Fox Point: The History of a Portuguese Bilingual Program
Roger Rice	51	Recent Legal Developments in Bilingual/Bicultural Education
	54	Notes and Commentary

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Introduction

The combined effect of the articles in this issue of *Inequality in Education* is to offer the reader a primer in bilingual/bicultural education. Armed with the materials that follow, a perceptive advocate can and should be able to join the fast growing movement and contribute to the efforts of those who have already dedicated themselves to the goals and promises of bilingual/bicultural education.

To understand the goals and promises of this movement it is essential to build upon a solid base of definitions as to our subject matter. To this end I offer five critical definitions developed by a group of nationally recognized leaders in the field of bilingual education at a "think tank" sponsored by Aspira of America, Inc. which took place in Columbia, Maryland from March 25-27, 1973:

> *Bilingualism* means, very simply, the ability to function in another language in addition to one's home language.
>
> *Biculturalism* is the ability to behave on occasion according to selected patterns of culture other than one's own.
>
> By *Bilingual Schooling* we mean the particular organizational scheme of instruction which is used to mediate curricula in the home language and in another language.
>
> *Bilingual Education* is a process by which the learning experiences provided in the home and other educational and societal institutions enable a person to fulfill total self-development as well as to function in another language in addition to the home language.
>
> And finally, by *Bilingual/Bicultural Education* we mean a process of total self-development by which a person learns and reinforces his or her own language and culture while at the same time acquiring the ability to function in another language and behave on occasion according to patterns of the second culture.

In addition to these definitions it is crucial that we recognize the goals of bilingual/bicultural education as an academically conceived programmatic attempt to fulfill a promise—yes, a promise—that is as old as America yet as evasive as the American dream. That promise is simply the development of an equal educational system that would adequately develop the potential intelligence of each child to its fullest.

The articles which follow indicate that neither legislation nor court orders, correctly or incorrectly interpreted, can bring about effective change in this field on their own. What the bilingual movement needs at this point in history is the collective energy of advocates, parents, students, teachers, administrators, legislators, law enforcers, and other citizens. Working together we can achieve the honorable goal of quality integrated education that does not compromise the notion that bilingual education is an educational tool with possibilities for the enrichment of all children, not just a remedy for some.

Alex Rodriguez,
Chairman
Massachusetts State Advisory Council for
Bilingual Education

COMING OF AGE IN BILINGUAL/BICULTURAL EDUCATION: A Historical Perspective

by Josué M. González

During the last decade personnel responsible for the schooling of linguistic minority children have been faced with increasingly complex demands and specifications for quality program design. Among the most radical of these has been the concept of bilingual/bicultural education, which was first promoted by Spanish-speakers but which has now been embraced also by speakers of French, Portuguese, Chinese, Polish, Greek, Japanese, and several Indian languages among others.

Because the concept strikes at a fundamental basis of American schooling—the language of instruction—and because of its complex underpinnings in group psychology, linguistics, civil rights, politics, and education theory, it has given rise to both anxiety and expectations in many sectors of the education community.

There is little question that an unusually high amount of misunderstanding presently exists as to the concept's goals and its underlying philosophies even though administrative, judicial and legislative mandates have gone far in institutionalizing the practice. Such responses have often been no less obfuscating than the polemics of minority advocates or the deliberations of academicians. An example of this is the strong governmental emphasis on "integration" which, to many school people, is incompatible with the need to "group" children according to their language development needs.

This article will attempt to outline the historical evolution of bilingual education in the United States through a review of changing educational language policy, and to present alternative applications in the direction of bilingual schooling. It is hoped that this will serve to lend a sharper focus to the issues extant in present practices and thus place in perspective the emerging trends which will no doubt guide the future development of the concept as a viable educational approach.

Josué M. González, an Associate Professor of Education at Chicago State University, is the Director of the Institute for Bicultural Education.

Bilingual Schooling in the U.S.— Antecedent Movements

In the past, non-English and bilingual instruction were more often than not the rule, rather than atypical rarities, in many parts of the United States. Faust (1969), Kloss (1970), Jorgensen (1956), Fishman (1966) and other researchers have delved deeply into the history of these movements. Leibowitz (1971) has summarized much of this in his own treatise on the subject as well as added judicial, administrative, and legislative backdrops to their eventual disappearance.

The following quotations from the latter serve to illustrate the extent of these practices:

> (During the 1700's) school instruction throughout Pennsylvania, Maryland, Virginia and the Carolinas was given in German, often to the exclusion of English. (p. 6)

> . . . in one district in Wisconsin one-third of the textbook funds were specified to be spent for German textbooks; in others school boards could hire only German-speaking teachers; and frequently local school-district records were kept in German. (p. 9)

> At the time (that California became a state), 18% of all education in the state was private and Catholic. (Ferris, 1962) These private schools were composed of pupils mainly of Spanish descent and the children were taught in the Spanish language under the direction of the padres. Initially, these schools were state-supported . . . (pp. 47–48)

> As late as 1884, a school law was passed in New Mexico which recognized the public Spanish-language elementary schools: "Each county shall be and constitute a school district in which shall be taught . . . reading, writing . . . in either English or Spanish or both, as the directors may determine." (pp. 51–52)

> In the 1800's the Cherokees had an educational system which produced a "population 90% literate in its native language and used bilingual materials to such an extent that Oklahoma Cherokees had a higher English literacy level than the white populations of either Texas or Arkansas." (p. 78)

English-only instruction: A hiatus

The advent of mandatory attendance laws for public schools, the elimination of public funding for church-related schools, and the movement towards a nationalistic, isolationist policy in the U.S. led quickly to a nationwide imposition of English-only instructional policies. Many states went as far as to pass laws which formally outlawed the use of other languages for instruction except in foreign language classes.

Most educators—with the support of the adolescent science of psychology—who advocated English-only instruction, were also supporters of the "melting pot" theory of acculturation. This assimilationist position was sanctioned at the highest levels of government by officials working to create a unitary Americanism both political and social. One of the best examples of such voices was that of Theodore Roosevelt. On more than one occasion Roosevelt issued *pronunciamientos* on the subject. Always the message was unequivocal:

> . . . any man who comes here . . . must adopt the institutions of the United States, and therefore he must adopt the language which is now the native tongue of our people, no matter what the several strains of blood in our veins may be. It would be not merely a misfortune but a crime to perpetuate differences of language in this country. . .
>
> We should provide for every immigrant by day schools for the young and night schools for the adult, the chance to learn English; and if after say five years he has not learned English, he should be sent back to the land from whence he came. (Roosevelt, 1917)

The need to consolidate the nation's territorial gains and solidify its political processes seems to have played an important role in this drive towards cultural and linguistic homogeneity. Leibowitz (1971) has hypothesized that:

> From a central government's standpoint, a common language forges a similarity of attitude and values which can have important unifying aspects, while different languages tend to divide and make direction from the center more difficult. (p. 1)

He also suggests that the reason for this restriction may have its roots far deeper in the foundation of the nation's socio-political ideology, far enough in fact, that it is possible to see it as a manifestation of the social and institutional racism which is now known to operate throughout the society.

> Further analysis of the record indicates that official acceptance or rejection of bilingualism in American schools is dependent upon whether the group involved is considered politically and socially acceptable. The decisions to impose English as the exclusive language of instruction in the schools

> have reflected the popular attitudes toward the particular ethnic group and the degree of hostility evidenced toward that group's natural development. If the group is in some way (usually because of race, color or religion) viewed as irreconcilably alien to the prevailing concept of American culture, the United States has imposed harsh restrictions on its language practices; if not so viewed, study in the native language has gone largely unquestioned or even encouraged. (Leibowitz, 1971)

The nation's xenophobia was no doubt exacerbated by developments in international affairs. Germany and Japan were clearly threatening to the U.S. Domestically, German-Americans and Japanese-Americans bore the brunt as targets of retaliation. In both of these groups bilingual schooling had been practiced extensively. From the beginning of World War I and through World War II bilingual education was officially restricted almost to the point of extinction. (Leibowitz, 1971)

The logic of the monoglots seemed ironclad at the time. If one assumes that all beauty, virtue and merit resides with one language (and the culture(s) it reflects), then the operational strategies are likewise clear: ban the use of all other languages in education and soon all diversity will disappear, harmony will prevail and the threat of Babelian discord will end.

Indeed this linguistic equivalent of book-burning worked admirably well. But it worked best with the Northern European immigrants, people who had a degree of cultural affinity and who shared certain priorities and goals in coming to the U.S. Equally important, they shared a Caucasian racial history. Other linguistic minorities accepted this imposition grudgingly. They felt they had no choice in the matter. Still other groups had by then accepted the assimilationist viewpoint and fell in with those who would promote "official" monolingualism.

Vocabulary Development

The world wars provided the powerless linguistic minorities with a new perspective. The Chicano, primarily, learned that his position as a second-class citizen was mitigated in battle. He learned that the leadership exigencies of war allowed him to prove his patriotism and valor and that he could do so even though his command of English was imperfect. More importantly, the Chicano soldiers around the world had an opportunity to observe that linguistic pluralism was the rule rather than the exception in other societies. This, plus the well deserved reputation of patriotism earned in combat, combined to give him an increased sense of citizenship which led him, upon his return, to seek the rights and privileges of citizenship with greater aplomb.

After returning from military service, many Chicano veterans found it necessary to band together into organizations with which to make their strength felt. The G. I. Forum and LULACs were born in this way. Having accepted the ethic that made education an essential prerequisite for entry into the American mainstream, the groups launched intensive literacy and educational improvement campaigns. One such effort was the "Little Schools of the 400". These were pre-school ventures designed to help Chicano children learn the four hundred most common words of American English. The theory was that if children underwent vocabulary development of this type, they would find it easier to succeed in school. This approach, although not questioning the prerogatives of the English language, was one of the first attempts to sensitize the system to the needs of the linguistically atypical and to seek, through an emphasis on language, to remediate the dysfunction between schools and learners. In the light of modern advances in language learning/teaching, this approach appears naive since it overlooks completely the phonological, morphological and syntactical aspects of language. Nevertheless, it found favor with many school people. To this day it is still a part of many summer school programs, enrichment and tutorial efforts, and early childhood activities.

"English as a Second Language" Approach

The ESL approach came into popular usage in the late 1950's and early 1960's as a direct consequence of the much publicized successes of the Army Language Schools and after the audio-

lingual method had become well established in foreign language education. Audio-lingual ESL was based on hypotheses and theorems which were basically sound, in that they recognized the primacy of oral language development as a prerequisite to formal instruction in reading and writing. When applied to the teaching of Chicano and other language minority children its successes were not optimal however, because it ignored all other incompatibilities save that of language. Furthermore, the wisdom of applying this approach to the education of young children is questionable since the methodology was originally developed to teach foreign languages to highly motivated adults.

The most salutory effect of this approach was no doubt the concentration of attention on the processes of language teaching and learning and the resultant realization that the "language barrier" was more a symptom of incompatibilities between the school and the learner than it was a child-centered anomaly.

The Case Solidifies

The ESL response to the alleged "language barrier" was not an isolated development.[1] Civil rights advocates too were busily at work prodding local and state governments to bring to light the extent of the miseducation being visited on linguistic minorities. Leibowitz (1971) has identified two such examples, one at the local and one at the federal level, that illustrate typical events which helped to build the case for concerted institutional responses to the problem:

> At the local level the New York City Board of Education in 1958 published its comprehensive *Puerto Rican Study* dealing with the difficulties encountered by these native Spanish-speaking pupils in the New York school system. (N.Y.C. 1958)

More importantly perhaps, foreign language education policy had begun to change.

> Quite apart from the political developments (which spurred the process), there was an increasing interest in introducing foreign language programs in elementary schools. This activity was assisted by a series of government grants under the National Defense Education Act, passed in 1958 in response to the Russian launching of Sputnik. Title VI and—later—Title XI of that Act emphasized the retention and expansion of our foreign language resources. (Leibowitz, 1971)

The National Defense Education Act (NDEA) not only legitimized the active study of languages other than English, it was also responsible for two other major developments of long-lasting effect. One, it provided financial assistance to many minority group students to attend college and specialize in math, science and *foreign languages*, the three areas in which Russian education was seen as superior. Second, through its intensive summer training institutes for language teachers, it contributed to the development of "language education" as a specialized teaching field.

> This renewed interest in foreign languages and foreign language teaching enabled new groups such as ACTFL (American Council for the Teaching of Foreign Languages) and TESOL (Teachers of English to Speakers of other Languages) to assert themselves in educational circles. (Leibowitz, 1971)

The Cubans Arrive in Miami

Although many Chicanos, Puerto Ricans, Native Americans and Orientals had long chafed under the intransigent monolingualism of American schools, their economic, social and political condition of powerlessness had effectively precluded any real success in altering this pattern. As the Cuban refugees began to arrive in Miami in increasing numbers during the late fifties and early sixties, this impasse began to dissolve.

In seeking to explain the Cuban success versus the other groups' failures in this regard, it is important to note that the early Cuban arrivals to Florida differed from the indigenous Spanish-speaking groups in several important ways:

- Many were from the middle and upper-middle classes. They had a strong literary tradition and were not

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unaware or reticent about demanding adequate services from social and political institutions. Additionally, they were politically cognizant of the workings of institutions and were knowledgeable of how to "negotiate" to the benefit of their children to a degree that was not then shared by other national-origin minorities in the United States.

- Because many of the early refugees came from the professional class, they were able from the onset to offer the services of trained teachers and other educational personnel from their own ranks. In cases where certification or other credentialing obstacles existed, the Cuban Refugee Act offered financial assistance on a scale not then (or since) available to other groups.
- Politically, American institutions responded to the educational needs of Cubans as would befit *transient refugees*. Thus, their needs were viewed

Photo by Alan Borrud

9

as temporary, unlike those of the Chicano or the Puerto Rican who presented more permanent or at least long-range potential for causing unwanted change.

- As so-called victims of a Communist state, the refugees were welcomed to capitalist shores in a manner which would demonstrate to the observing world that the U.S. would go to any length to harbor political exiles who share our political ideologies. Other minorities were still secrets well kept from the critical eyes of other countries.
- Because most of the early Cuban refugees were of predominantly European stock, the curse of racism was not a significant factor in preventing incorporation into the American mainstream.

The net effect of these factors, combined with the diligent efforts of the Cubans themselves, led to quick action. The Cuban revolution came to power late in 1959. By 1963, the Dade County (Miami) Public Schools had initiated a bilingual education program which soon attracted national attention. The Dade County experience was a clear indication that bilingual schooling was a viable concept. Before long, the bilingual schools in Miami Beach became unofficial demonstration centers for the nation. Advocates from other Spanish-speaking areas made pilgrimages to Miami. They trudged through the halls observing instruction, they reviewed curriculum materials, and interviewed staff members. Then, they returned to their monolingual ambience and sought to persuade their respective institutions to move along similar paths.

By 1967 when the U.S. Senate Subcommittee on Bilingual Education called for hearings on the question of a federal subsidy for bilingual education, an impressive array of documents and educational and civic leaders were on hand to present a convincing case: bilingual schooling could improve the Spanish-speaking child's chances of success in school but federal funding was necessary for the development of pilot programs to guarantee the development of adequate materials, personnel, and instructional techniques.

In 1968 a new provision, Title VII, was added to the Elementary and Secondary Education Act of 1965 as the vehicle for federal participation in promoting this "new" concept of schooling. Initially, the corresponding appropriation measure was rejected by Congress. The following session, however, Congress appropriated 7.5 million dollars and the federal role in bilingual education became a reality.

Title VII, ESEA—Progress and Illusions of Progress

Without a doubt the passage of Title VII, ESEA, was a major breakthrough which was to have a significant impact on educational programs for the linguistically atypical child. Its most significant features were that:

- It recognized the political feasibility of encouraging instruction in a language other than English, thereby raising serious questions about the "English-only" laws which existed in many states.
- It began the process of formally recognizing "national-origin minorities" as constituencies which may seek differentiated services on grounds other than those of race/racism or segregation/integration.
- It began the process of institutionalizing the notion that *equality of educational opportunity* is not synonymous with *equal education.*
- By limiting its program development funding phase to a five-year period and exacting promises of continuity from LEA grantees, it succeeded, albeit imperfectly, in promoting the concept of local (and *state*) effort in financing the cost of program development and implementation.
- As the first major legislative victory of linguistic-minority groups it went far in demonstrating to these constituencies that it was indeed possible to move the federal congress to action on an issue which was of interest only to minorities. This "taste of victory" was a political morale booster to many who up to then had felt powerless to change the system.

- Through a formal governmental recognition of the "legitimac," of bilingual education, a welcome impetus was provided to the emerging breed of bilingual educationists. Many non-native-English-speaking classroom teachers found themselves almost overnight functioning as project directors, curriculum writers and trainers of other teachers. Many of these who survived these early trials by fire went on to join other educational innovators in further study, research and advocacy efforts. Subsequent frontiers have been much expanded through the work of these persons.

But with all of its positive aspects, Title VII had one grave debilitating aspect which has only recently begun to be recognized. Most of the testimony and opinion which gave spirit to the law was based on a *remedial/compensatory* model of minority-group education. In essence, what it suggested was that temporary use of the native language would help remediate or compensate for childhood rearing practices and experiences which were deemed inadequate in preparing the child for learning in a *regular* instructional program. The use of say, Spanish with Chicano children, was thus perceived as an *unfortunate necessity* rather than an opportunity for enrichment. The ultimate aim, of course, was to move children *out* of functional bilingualism and into monoglot instruction.

This legacy of Title VII (Title I, and other federal programs) thus helps to maintain the outdated "melting pot" syndrome which discourages cultural pluralism in American society. Another of its disturbing features was its complete disregard for basic principles of human development and the role that linguistic and cultural continuity plays in development. (González, 1974)

In summary, Title VII functionally promotes the use of other languages only as a means to the end of learning English, after which the continued use of the native idiom is not recommended. During the past twelve months HEW–USOE administrators, in attempting to clarify Title VII goals, proposed the following:

> The fundamental goal of a federally-supported bilingual education program is to enable children whose dominant language is other than English to develop competitive proficiency in English so that they can function successfully in the educational and occupational institutions of the larger society . . . this view of the federal goal regards the use of the home language and reinforcement of its culture and heritage as necessary and appropriate means of reaching the desired end of giving the children from the various language groups proficiency in the dominant language, and not as ends in themselves. (Memorandum, DHEW)

However, the statement of goals recently adopted does include a broader recognition of the concept of cultural maintenance.

State Bilingual Legislation— "Un paso pa'lante y dos pa'tras"*

At about the same time that the federal bureaucracies were attempting to clarify their operating philosophies relative to the purposes of Title VII, state legislatures were beginning to receive pressure to pass legislation which would build on the initiative of the federal congress. Since Title VII funding extended only for five years, all those programs funded during the first cycle faced loss of funding in 1972.

Massachusetts was the first state to respond to this need. In 1972 that state passed a mandatory bilingual education law which requires bilingual instruction in any school district having 20 or more children from the same non-English-speaking background.[2] By the fall of 1974, similar bills had been passed in Texas, Illinois, New Mexico, New Jersey and California. In other states, administrative directives having the force of law were also issued. Most of these states have also appropriated funds ranging from $200,000 in Alaska to $8,000,000 in Illinois.

These developments have served to promote the practice of bilingual education at least *quantitatively*. The quality of this momentum, however, is questioned by many. Beginning with the Massachusetts measure, the term "bilingual education"

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* Translation: "One step forward and two steps backward."

never appears without the modifier "transitional" preceding it. What this implies, of course, is that in all instances bilingual education is seen only as a stepping-stone to English and never as an educational goal worthy of promoting in and of itself. In essence, it is a philosophy which institutionalizes one of the major weaknesses of Title VII and makes more difficult the continued development of the concept as well as its full integration into the philosophical and operational scheme of American education.

The consequence of this focus has been that no serious challenge has been made to the ethnocentric practices of American education. As a result, many of the bilingual programs created by state mandate are created and conducted as adjuncts to the "regular" program of instruction and their existence is contingent on the continued availability of state and federal "soft money". In addition, most such programs limit the eligible participants to children described as non-English speaking or "of limited English-speaking ability". Thus the potential of bilingual education as a vehicle for increased understanding and harmony between ethnic groups in the U.S. is truncated. Concomitantly, it is denied the support of the average English-speaking, middle class parent who finds it difficult to accept bilingual instruction as something that would be beneficial to his/her own children. This in turn reduces the priority of the concept in the eyes of the academic establishment.

Assessing the Results of Bilingual Legislation

The most cursory examination of bilingual education programs created through legislation reveals certain basic characteristics which are shared by many of these:

- They are for the most part remedial/compensatory in nature, i.e., they presume linguistic and/or cultural *disadvantagedness* or *deficiency* on the part of students with limited English-speaking ability.
- In general, they are *transitional* in their emphasis and regard the learning of English as the ultimate goal. Little emphasis is placed on language *maintenance* and the corollary assumption that cultural and linguistic pluralism is a desirable condition in the society.
- The clientele of the programs are students who *already* possess a language other than English. Monolingual English speakers are seldom involved, thus inhibiting a movement towards multilingualism in the greater society.
- Even those programs which serve linguistic minorities relatively well are often *too restricted* in scope. Their emphasis too often is strictly *linguistic*. Very little is done to attack other areas of incompatibility such as culture, poverty, mobility, societal perceptions and the long-range deleterious effects of social and institutional racism, all of which inhibit successful school performance. (Cárdenas, 1974)
- The expectations placed on such programs are often unrealistically *high*. All too often the performance objectives for a given program in a given year purport that the program will reduce drop-outs or increase achievement to a degree which borders on the ridiculous. As a consequence, the credibility of the concept is impaired when particular programs are unable to reach the lofty ideals of their overeager designers or those of insensitive legislators and bureaucrats who demand more of the programs than they can realistically accomplish.
- Because they are often funded through "soft money" grants, many programs have little if any long-range effects on the schools which host them. This dichotomy between the bilingual program and the "regular curriculum" further exacerbates the former's transitional nature and retards a more comprehensive restructuring of the school as a social institution. The net effect is that little systemic change occurs.
- The greatest proportion of Title VII and state funding goes directly and exclusively to the public schools. Ostensibly, this is in recognition of the need to develop operational programs which provide instructional services *di-*

rectly to children. Since minimal funds flow to colleges and universities these institutions have remained unaffected and unresponsive to the need for preparing competent staff to service the schools' programs. Thus, the long-range capacity-building aspect of program development is impeded. Additionally, the gains which accrue from scholarly research at the university level are aiso reduced.

- Numerous issues and problem areas remain unresolved. Among these are alternative instructional designs, evaluation models, adequate training provisions and curriculum materials as well as related psycholinguistic and sociolinguistic nuances yet to be properly researched.

The Present State of the Art

While it is true that legislation has not kept apace of developing philosophies of education for a pluralistic society, it should be noted that as these ideologies develop there has been a parallel albeit sluggish effort at implementing more realistic and sound programs.

Some characteristics of the five different types of programs presently in existence illustrate an increasing sophistication in the manner in which both problems and responses are conceptualized.

TYPE A PROGRAMS: ESL/Bilingual (Transitional)

1. Strict remedial/compensatory orientation.
2. Few (if any) bilingual teachers.
3. Bilingual aides relied on for mother-tongue instruction.
4. Use of home language limited to small segments of time.
5. Preponderance of "home made" curriculum materials; some may be prepared by paraprofessional staff and due to lack of direction may lack proper sequencing and/or continuity.
6. Programs have few extra-mural resources available to them for staff training, evaluation and overall capacity-building.
7. Clientele is limited to small percentages of children (usually poor and having other serious problems) who speak no English.
8. Greatest effort is in teaching English and eliminating home-language usage usually by grade 3.
9. Programs are not integrated into the on-going school curriculum. Students often participate on a haphazard "pull-out" basis.
10. Few efforts are made to involve parents in a meaningful partnership with the schools. Home language, culture and child rearing practices are often perceived as detrimental to child's performance in school.

TYPE B PROGRAMS: Bilingual Maintenance

1. Students' fluency in another language is seen as an asset to be maintained and developed.
2. Native English-speaking students are involved in the program only minimally if at all.
3. Recruiting and staff development efforts are made to increase the preparation and efficiency of bilingual staff.
4. Team teaching is often employed to maximize bilingual staff resources.
5. Much attention is given to development of English language skills but use of the home language is continued through the grades to the extent that resources make that possible.
6. Varying degrees of integration of the program into the "regular curriculum" but much of the developmental effort remains dependent on 'soft money".
7. Parental involvement is recognized as a potential asset. Attention is given to community resources as sources for curricular content and programmatic direction.
8. The home language is used more extensively and systematically in the teaching of subject content areas and not merely for giving directions or class control.
9. Curriculum development, staff training and evaluation aspects of the program are more comprehensive, better planned and more adequately staffed than in Type A programs.
10. Extra-mural resources are sought out, e.g., college and university personnel, expert consultants, assistance centers, etc. In addition staff may be allowed to visit other programs and participate in conferences and other such

opportunities for learning and interaction.

11. Efforts are made to reach as many non-native English speakers as possible but emphasis continues to be placed on language skill development to the exclusion of other, non-linguistic needs of the child. Differences often occur between programs on their approach to "standard" vs. colloquial usage of the home language for instruction.

TYPE C PROGRAMS: Bilingual/Bicultural (Maintenance)

Similar to Type *B* but in addition:

1. Seeks to integrate "history and culture" of the target group as integral part of curricular content and methodology.
2. An emerging recognition of the role of cultural referents in human development is reflected and plays a key role in staff training and its orientation towards cultural atypicalness. (González, 1974)
3. Extensive staff training in history and culture of the child's ethno-linguistic group. Often, however, much confusion exists as to the *nature of culture* and the procedures for inventorying same to achieve local relevance and proper interpretation of its manifestations.
4. Programs of this type are often found in areas having professional groups with strong ethnic group identification. Consequently, they may also be characterized by strong advocacy, civil rights and community-service aspects.
5. Increasingly, more attention is placed on other aspects of school-child dysfunction. Areas of incompatibility are corollarily identified and incorporated into the program's scope. (Cardenas, 1974)

TYPE D PROGRAMS: Bilingual/Bicultural (Restorationist)

This type of program is similar to Types *B* and *C* except that ethnic group identification goals reach higher priority levels. In this type of program a strong attempt is made to *restore* to children the option of learning the language and culture of their ancestry even though they themselves may have lost it due to assimilation.

An outstanding example of this approach is seen in the work of the Council for the Development of French in Louisiana (CODOFIL). In a cooperative effort with the French government, *coopérants* are sent to Louisiana, at the expense of the French government, to stimulate instruction in and use of the French language. (Swanson, 1974)

TYPE E PROGRAMS: Culturally Pluralistic

This approach is similar to *D*, but here the emphasis is not restricted to those students from a particular ethno-linguistic group. Instead, *all* students are involved in linguistically and culturally pluralistic schooling. The approach represents a philosophy which is diametrically opposed to that of the "melting pot" ideology. The underlying assumption is that all constituencies of education benefit from an active participation in and appreciation of each others' backgrounds.

This approach is best exemplified at the Multi-Culture Institute, a private school for children ranging in age from three to nine. At this San Francisco school the culture and history of the different groups represented in the school supply the bulk of the curriculum's content. In a recent report (NEA, 1971), the following ethnic groups were represented in the school's population and program: Jewish-American, Chinese-American, Latin-American, Afro-American, Philippino, Welsh, Native American, Canadian, French, German, Scottish, Irish and Swedish.

The preceding is, admittedly, an oversimplification of current trends. Many programs presently in operation incorporate characteristics of more than one type of approach.

The significant fact to be kept in mind is that increasingly the trend is towards the more comprehensive programs and away from the more primitive (Type A) programs although this thrust is by no means universally accepted. There is opposition and it reminds us that the "melting potters" are very much alive and well and in many cases holding influential positions. In a recent *Washington Post* editorial Stephen Rosenfeld sounded the following alarmist note:

> With practically no one paying heed, the Congress has radically altered the traditional way by which immigrants become Americanized. No longer will

> the schools be expected to serve largely as a "melting pot", rather, under a substantial new program for 'bilingual' education, the schools – in addition to teaching English – are to teach the 'home' language and culture to children who speak English poorly. . . . it is not clear how educating children in the language and culture of their ancestral homelands will better equip them for the rigors of contemporary life in the United States. . . Will (this) not also distract attention from learning English and the social skills that accompany the learning of English, or give him an excuse for not buckling down hard on English? *(Washington Post,* September 27, 1974)

The *New York Times* (November 3, 1974) had also joined in with a thinly disguised revisitation to xenophobia. Albert Shanker, in a column sponsored by the United Federation of Teachers, echoed the Rosenfeld position:

> While the need for the child to feel comfortable and to be able to communicate is clear, *it is also clear that what these children need is intensive instruction in English so that they may as soon as possible function with other children in regular school programs.* (emphasis in the original)
>
> . . . The American taxpayer, while recognizing the existence of cultural diversity, still wants the schools to be the basis of an American melting pot.

Both of these writers appear to be oblivious to the numerous research studies which demonstrate that second language acquisition is not impaired – and in many cases is enhanced – through instruction in the child's home language. (Orata, 1953; Macnamara, 1966; Modiano, 1968; Richardson, 1968; Peale and Lambert, 1962; Balasubramonian, 1973; Ramírez, 1972)

Increasingly, however, the results of these studies are being disseminated and are beginning to impact the design of educational programs for linguistic minority children. In addition to the gradual re-direction emerging in Title VII a number of other promising developments have occurred recently which point the way to a changing policy in this regard.

The decisions of *Lau v. Nichols*[3] and *Serna v. Portales*[4] have established the viability of using the courts as instruments of encouragement to change.[5] The May 25th Memorandum of DHEW[6] clearly establishes the role of the federal executive branch in this regard and even in the face of the traditionally weak HEW enforcement it has already begun to show results.

The broader areas of incompatibility which need to be addressed are also emerging with the backing of the law. In *Keyes* v. *School District No. 1, Denver*[7], for example, there is a more definite movement away from a purely linguistic thrust. The court-ordered plan resulting from *Keyes* is in fact a truly exemplary one in terms of national origin minority education. Likewise, the testimony and legislative history behind the recent amendments to Title VII ESEA clearly indicate that a definite turn has occurred in the minds of many legislators regarding the inclusion of a minority child's culture in the curriculum to which he or she is exposed in school.

In essence, however, what the different program types suggest, when viewed in the light of historical language policy considerations, is that there is a close relationship between movements towards (1) *equality* of educational opportunity for language minority groups and those geared towards (2) *quality* education for *all* children in the United States. Thus, if it is fitting that fifteen million Americans should become bilingual, it should be no less fitting that the 185 million others who speak only one language should also have an opportunity to broaden their communicative ability. But only an intensive effort in both of these areas conducted simultaneously and in a coordinated manner will produce that highly desirable end.

FOOTNOTES

[1] Not unexpectedly, given the historical leanings toward homogeneity, the "language barrier" was seen as a hurdle to be overcome by the *students* rather than by the *schools*. Only until later, with the advent of bilingual schooling, was it suggested that the schools share a need to adapt themselves linguistically to the needs of the student.

[2] Chapter 71A, Massachusetts General Laws Annotated.

[3] *Lau* v. *Nichols,* 414 U.S. 563 (1974).

[4] *Serna* v. *Portales Municipal Schools,* 351 F. Supp. 1279 (D.N.M. 1973).

[5] *Aspira* v. *Board of Education of the City of New York,* 58 F.R.D. 62 (S.D.N.Y. 1973), recently settled out of court, is the latest in this important sequence.

[6] *35 Fed. Reg.* 11595 (July 18, 1970).

[7] *Keyes* v. *School District No. 1, Denver,* 413 U.S. 189 (1973), reh. denied, 413 U.S. 921 (1973).

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Bilingual Education, Segregation, and A Third Alternative

by Jose A. Cárdenas

The Spanish-speaking population in the United States continues to be educationally shortchanged as a result of school districts' widespread failure to institute adequate bilingual instruction programs. This failure is most often attributed to organizational obstacles. Educators caught in equality of educational opportunity litigation commonly complain of difficulties in offering bilingual education within heterogeneous groupings of children having varying language dominance characteristics.

Faced with the demand for implementation of bilingual programs, school districts in many areas have tended to project such programs solely for homogeneous groups of monolingual, Spanish-speaking children. Yet they generally have neglected to accept, project or implement bilingual education programs for small numbers of Spanish-speaking children, or for any number when found in heterogeneous settings.

The organizational difficulties that many school districts cite are, of course, very real. However, methodologies to resolve them do exist. Unfortunately, it is suspected that some recalcitrant school systems might be using their organizational problems to mask an unwillingness to provide for the educational needs of non-English-speaking children.

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Is There a Paradox?

Whatever the underlying reason, one thing is clear: school districts are failing to deliver adequate bilingual instruction for all but a handful of the non-English-speaking school population. Instead, they have proffered two equally dysfunctional alternatives. Spanish-speaking children are either asked to forego the benefits of bilingual instruction or allow themselves to be segregated in order to participate in a bilingual program.

The school districts' argument relative to bilingual instruction in a heterogeneous setting is commonly stated as follows: "How can a school system operate a classroom in which a portion of the children speak no English and must be taught in Spanish and a portion of the children speak no Spanish and must be taught in English?" Teaching all children in English denies the non-English-speaker equality of educational opportunity, but reversing the common methodology and teaching all children in Spanish creates a handicap for the non-Spanish-speakers and denies them equality of educational opportunity.

On its face, this paradox seems to present an insuperable problem. It was raised in the Del Rio intervention in *U.S.* v *Texas*[1] when the Federal Court for the Eastern District of Texas ordered a bilingual education program implemented in the San Felipe Del Rio School District. The same argument was made in *Keyes* v *School District No. 1, Denver*[2] during recent remedy hearings. With the advent of *Lau* v *Nichols*[3] and *Serna* v *Portales*[4], holding Title VI of the 1964 Civil Rights Act violated by school systems' treatment of non-English-speakers, it can be anticipated that the problem will be a primary consideration in the development of education plans in response to these and related court orders.

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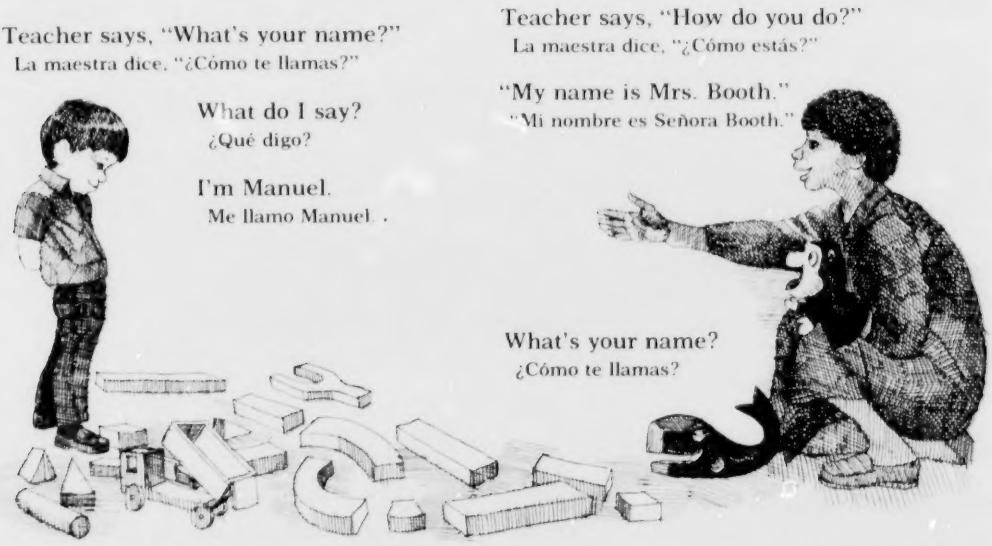
Teacher says, "What's your name?"
La maestra dice, "¿Cómo te llamas?"
What do I say?
¿Qué digo?
I'm Manuel.
Me llamo Manuel.
Teacher says, "How do you do?"
La maestra dice, "¿Cómo estás?"
"My name is Mrs. Booth."
"Mi nombre es Señora Booth."
What's your name?
¿Cómo te llamas?

Drawing by Joe Lasker from *What Do I Say?* (English/Spanish Edition) by Norma Simon, Chicago: Albert Whitman & Company (© 1967).

Similarly, the new legislative trend making bilingual education mandatory in an increasing number of states will, in all probability, lead to many school districts continuing to cite this paradoxical situation as a rationalization for their failure to implement bilingual programs. Or, districts might apply the equally repugnant alternative, the continued segregation of minority children in the name of bilingual education.

Clearly, many school districts' current practices of offering Spanish-speaking students either segregated bilingual education or integration without bilingual education are counterproductive to a healthy learning climate. Just as clearly, a third option to these practices must be developed as quickly as possible, lest litigation and legislation be unfairly influenced by the paradox we have described.

Before outlining some specific methodologies for teaching Spanish-speaking children in a heterogeneous setting, let us examine the prevailing educational dogma that has led to the often cited bilingual education paradox.

This dogma projects a classroom situation in which thirty children are marched in lockstep through identical instructional activities. Obviously, all children, regardless of ethnicity or language, have different learning abilities ranging perhaps from retarded to genius, varying past achievement rates ranging from retained-in-grade to child prodigy, differing interests, aspirations, motivations, pressures, and learning styles. Yet, in spite of their differences, children are subjected to common instructional activities directed at the mythical average or typical child. It is this methodology, based on an outmoded dogma, that cannot fail to produce the mediocrity for which our schools are becoming famous.

Individualizing Instruction

Coping with varying types and degrees of

language dominance is no different than coping with other varying characteristics of children. But in order to do so it is necessary that learning activities be differentiated in keeping with children's varying characteristics. The ultimate goal is an individualized instructional program in which each activity is compatible with each individual child's characteristics, not only as they pertain to economic status, culture and language, but also to include learning ability, achievement level, motivation, interests, etc.

In order to accomplish this humanizing or individualization of instruction it is necessary to change our perceptions of the classroom teacher. The teacher should no longer be perceived in a "little red schoolhouse" role, interacting with thirty children as they recite their lessons, but rather as a director of learning activities, utilizing diagnostic, prescriptive, and instructional resources in carrying out learning activities for individual, small groups, and large groups of children.

School systems must develop the technical and organizational capability for the implementation of such instructional programs. Clinging to outmoded educational dogma is not only fruitless but dangerous, since it is impossible to adequately train children for living in the twentieth century with eighteenth century methodologies. Neither the Spanish-speaking nor the English-speaking will survive.

Fortunately, the state of the art is such that methodologies are available to deal with the complexities of modern instructional problems. The following methodologies have been successfully applied as responses to the need for providing unique learning situations in keeping with the varying characteristics of children.

Groups: Progressive teachers have learned to utilize the technique of forming flexible and interchangeable groups for implementing some instructional activities. Reading instruction is often presented in small intra-classroom groups. Small groups of children reading at similar levels interact with the teacher while the rest of the class performs other work and play activities. Skilled teachers have no problem in training children to conduct self-directed activities which are neither wasteful nor disruptive as the teacher works with a part of the class. Other areas of the curriculum can be and are being taught in this manner. There is no reason why similar intra-classroom groups cannot be formed for bilingual instruction on the basis of language dominance.

Exchange: Another response to the varying characteristics of children and teachers is to regroup among different classrooms in the same school for varying periods of time during the day. Thus non-English-speaking children can be regrouped for bilingual instruction during the school day and regrouped heterogeneously for activities in which language dominance is not a critical problem. This practice has been observed in the early elementary grades in certain progressive school districts for many years. In a more sophisticated and institutionalized form it is the basis for most secondary school organizational patterns, though such strict departmentalization is not being recommended here.

Staff differentiation: This favored response to the problem of heterogeneous grouping was found very effective in the Edgewood school district in meeting the unique needs of children. (The Edgewood Independent School District, the poorest of 1149 school districts in Texas and of *Rodriguez* fame,[5] pioneered in the development of successful instructional programs for economically disadvantaged and minority children in San Antonio, Texas.) The response consisted of providing staff resources for teachers in order to give each child a highly individualized instructional program. Among personnel utilized for individual and small group instruction were assistant teachers, aides, student teachers, interns, practicum college students, volunteer parents, and other school children.

The teacher was given sufficient time to devote to training and planning activities, and most of the actual interaction with children was carried out by trained paraprofessional personnel as described above.

Assistant teachers and teacher aides were paid paraprofessionals employed with funds made available by the state foundation program, Title VII, Title I, Model Cities, Career Opportunities Program (COP), employment and training programs, veterans' programs, Teacher Corps, and a variety of other sources. Since district policy demanded that paraprofessional personnel be recruited from the immediate school community,

they invariably reflected the child's economic, cultural, and language characteristics. Though it took several years to recruit an adequate supply of bilingual teachers, each child in the school had immediate and ready access to paraprofessional personnel who could converse in the child's preferred language mode.

Colleges placed a large number of bilingual interns, student teachers, and practicum students. Many of the college students came to San Antonio for this purpose from other cities and from as far away as Michigan and Oregon. This type of staff resource was acquired at no cost to the school district.

High school students in psychology, child care, and homemaking classes participated in Youth-Tutoring-Youth (YTY) programs in the district. Junior high school students were also utilized. The benefits derived by the children being taught were exceeded only by the benefits derived by the secondary school students participating in the program. The Youth Tutors made substantial gains in the subject matter areas in which they taught. Truancy and disciplinary problems among the secondary students before participation disappeared as they found respect and self-fulfillment in helping other children.

The most unexpected payoff in utilizing differentiated staffing was from parents who participated as teaching volunteers. "A parent a day will keep the doctor away" was commonly heard as teachers attempted to meet a goal of at least one parent a day in each classroom. Either the skills needed for conducting simple and routine instructional activities (in English or Spanish) have been grossly overrated, or skills possessed by laymen have been grossly underrated, since the parents experienced success in working with the children. Their success grew as they continued to develop skills under the close supervision of the teachers. Parents who had never had much to do with the school proved that they did care for their children when the relationship with the school became positive, successful, and rewarding.

This elaborate account of successful experiences in implementing staff differentiation patterns is presented in order to demonstrate that such staffing is practical and that the facilitating of a bilingual program need not be constrained by a lack of local wealth or the absence of certified bilingual staff. Many other school systems have experienced similar success in the development and implementation of differentiated staffing.

Resource materials: Individualization of instruction can be achieved by the utilization of a wealth of instructional media which is readily available. Motion pictures, television, slides, and filmstrips can be utilized individually or in small groups. Individual or group language laboratories provide for a variety of instructional activities. Programmed instruction and self-pacing materials can also be utilized, as well as an endless variety of books, games, workbooks and other materials.

SUMMARY

It has been shown that the enrollment of small numbers of non-English-speaking children, time-space constraints, or the lack of a large certified bilingual staff need not be obstacles to providing quality instruction for all children in a bilingual education program.

The self-described helplessness of some school districts in coping with heterogeneous language groupings of children is more of an admission of general educational inadequacies than a problem of bilingual education, though a relationship has been observed between the conservative provincialism of racist school systems and the conservative provincialism of their instructional programs.

With minimal effort and a minimum of cost school districts can offer a third option to the two dysfunctional alternatives, segregation with bilingual education or integration without, which perpetuate the denial of educational opportunities to non-English-speaking children.

FOOTNOTES

[1] *United States* v. *Texas,* 342 F. Supp. 24 (E. D. Tex. 1971), affirmed 447 F. 2d. 441 (5th Cir. 1971), 466 F. 2d. 518 (5th Cir. 1972).

[2] *Keyes* v. *School District No. 1,* 380 F. Supp. 673 (D. Colo. 1974).

[3] *Lau* v. *Nichols,* 414 U.S. 563 (1974).

[4] *Serna* v. *Portales Municipal Schools,* 351 F. Supp. 1279 (D.N.M., 1972).

[5] In *San Antonio Independent School District* v. *Rodriguez* the United States Supreme Court rejected a claim that the Texas school financing scheme was inconsistent with federal constitutional provisions. 93 S. Ct. 1278 (1973).

Organizing for Bilingual Education: ONE COMMUNITY'S EXPERIENCE

by Aida Waserstein

In September 1973, there were at least 481 Spanish-surnamed children in the Wilmington, Delaware, public schools,[1] over half of whom did not speak or comprehend enough English to function in an all-English classroom.[2] Yet, there were only three bilingual teachers in the entire school system working with Spanish-speaking students. Today, slightly over a year later, there is a $500,000 program funded through local and federal monies, with a staff of over forty bilingual people to respond to the needs of these students. In addition to the twenty-three teachers, there is a curriculum developer, a social worker, two guidance counselors, a psychiatrist, a nurse, and thirteen paraprofessionals recruited from the local Spanish-speaking community.[3]

This article will describe the negotiation process which culminated in the establishment of a bilingual education program in Wilmington. It will mention the kinds of problems which were encountered and discuss some of the major policy decisions that were made during its development. Finally, the article will consider why negotiation rather than litigation was selected as the vehicle to achieve a bilingual program.

Getting Into The System And Finding The Facts

Although there were several students at Wilmington High School who did not speak enough English even to find their classrooms, the school had decided to discontinue its "English as a Second Language" (ESL) program on the grounds that there were "not enough" Spanish-speaking children to "warrant" continuation of the program. According to the high school administration, there were only "fourteen or seventeen" Puerto Rican students in the school. After a census was taken, it was learned that there were actually ninety-three Puerto Rican students, of whom thirty-three did not comprehend enough English to function in a regular classroom.[4]

In response to a call from a local youth worker, who brought the above to my attention, I began meeting informally with interested parents, educators and community leaders to discuss the problem. Ultimately a task force emerged to serve as a negotiating team and to become the core of the Parent and Community Council which monitors the performance of the bilingual program.

Our first task was to get information on what was happening in the school system. We visited schools and talked with students, teachers, and administrators, asking them to verbalize their complaints and to indicate what kinds of resources they needed. In gatherings with high school students, for example, we encouraged them to write short essays either in English or Spanish describing what problems they encountered in school. These essays were later included in a proposal for federal funds, to help document the need for a bilingual program.

The school visits were useful because they provided us with first-hand information and helped to align potentially divisive forces to the need for greater efforts in bilingual education. In relating to the three Spanish-speaking teachers, for instance, we explained that our goal was not to minimize the work that they were already doing

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for the Spanish-speaking community, but to point out the deficiencies in the existing system in order to obtain additional resources. But most importantly these visits revealed that, with a few exceptions, most of the teachers and administrators lacked information about the Spanish-speaking students and seemed to have little concern for the problem. Like the main character in Ralph Ellison's novel, the Spanish-speaking student was ". . .invisible. . .simply because people refuse[d] to see. . ." her/him.[5]

An example of this lack of visibility is the fact that the top administrators in the system did not know that the total enrollment of Spanish-speaking students had doubled from 1967 to 1969, and again from 1971 to 1973, and that Spanish-speaking students constituted 10-12% of the total enrollment of some of the schools.[6] In addition, the person in charge of attendance claimed that Spanish-speaking children were not dropping out at the middle school level (6th-8th grade) because it was not "legal" to drop out before age 16. He could not, however, account for the children who had enrolled each September but were missing by the end of the academic year. Finally, the person who was head of personnel at the time apparently had received no "official" requests from the principals for Spanish-speaking teachers. Therefore, he claimed that there was no need for them and that if there were a need he would have no trouble finding them. Apparently, he was not aware that there is a scarcity of trained bilingual education personnel.

This lack of visibility was also evident in daily school life. Because the school environment was very frustrating for the Spanish-speaking child, s/he was likely to attend less often and to drop out earlier than his or her Anglo peers.[7] When s/he came to school, s/he had little opportunity for participation because the classroom and extra-curricular activities were conducted in English, a language which s/he did not understand. In the classroom, s/he was often relegated to the back of the room where s/he was out of the monolingual teacher's way but where s/he was also less likely to benefit from academic instruction.[8] Because an inability to communicate with the teachers prevented the learning of new concepts appropriate for the student's grade level, s/he fell behind academically. And, since s/he could not communicate with peers, his or her circle of friends was limited to those who speak Spanish. S/he was, thus, segregated from the rest of the student body.

In addition, the school system's failure to provide supportive resources and to stress the positive value of the Spanish-speaking student's culture and language had negative consequences for the child's self-image. In a totally English-speaking environment, his or her native speech was regarded as a "disadvantage" and cultural differences as "defects". The ability for positive self-appraisal was undermined and this, in turn, weakened his or her motivation to succeed socially and academically. School was, in essence, an alien and cold environment where s/he felt as an outsider.[9]

These findings, among others, led us to the conclusion that we wanted a bilingual-bicultural program with at least these three components: instruction to enable the student to learn English, academic instruction in Spanish, and instruction in Puerto Rican history and culture[10] to encourage a sense of identity, pride and self-respect.

Group Work With The Spanish-speaking Community

In the development of our bilingual education project it was essential both to continually utilize the resources of the Spanish-speaking community and to keep the channels of communication open with those people and with others outside that community. The first was important because it enabled the work to be a group endeavor rather than the effort of a sole individual. The second was necessary to clarify potential misconceptions and to generate local support for the creation of a bilingual program.

As a legal services attorney, I felt it necessary to work closely in a group effort with community members and with individuals from agencies which are supposed to serve the Spanish-speaking community. As a result, the key people in our negotiating team included a Spanish-speaking parent, a former elementary school teacher who had worked with Puerto Rican children, two youth workers who had direct contact with high school students, and an administrator from the local community college who had had some experience in negotiating with the school system.[11] Their first-hand knowledge of the community and the school system was invalua-

ble. It helped us to understand the bounds of what was feasible to accomplish in each community meeting and in each negotiating session, and enabled us to develop strategies which were successful.

The process of keeping open the channels of communication included the holding of regular meetings and the dissemination of information through frequent letters, written in English and in Spanish, to a mailing list of almost one hundred interested people. The purpose of these communications was to keep all appraised of the current status and progress of our efforts. In addition to almost weekly work meetings which were open to anyone who was interested, we held large community meetings on the average of every two or three months. These meetings were held in school buildings located within the Spanish-speaking community so that participants could walk there, and were conducted bilingually.

Prior to each negotiating session, the work meetings were used to plan strategy, to clarify goals and to define the bounds of possible compromise for the forthcoming negotiations. In addition, there usually was a second meeting held one or two hours before each negotiating session, designed to inform individuals attending that session of our strategy, and to enable the members of the group to operate as a coordinated unit during the negotiations.

Two obstacles were a continuing problem in our efforts to encourage community involvement. The first one was the difficulty in obtaining the participation of Puerto Rican parents, and in maintaining their interest in a long-range project. Among others, reasons for this are that the parents had many other daily problems which needed their immediate attention, and the fact that they had not had much experience in the processes of community organization and negotiation. Due to their lack of experience in those areas which seemed remote from their daily lives, they were reluctant to attend meetings and to take an active part in making decisions. The second obstacle was the difficulty in getting leaders from various segments of the community to overcome their personal differences and work on a common project.

Although not directly related to the question of bilingual education, these problems were real and needed to be addressed by our group. In order to encourage parental participation we relied on personal, face-to-face contact and worked through established institutions such as the church, the schools and the local community center. We made ourselves visible in the community by attending social functions in places where Spanish-speaking people gather. We tried to be available to help meet other more immediate needs and worked on short-range goals to maintain interest and achieve small measures of success. Without this, people would have become discouraged in waiting for the duration of our long-term project. We thus became more attuned to the life of the community and developed a relationship of trust with its members. Finally, we tried to overcome the problems of fragmentation and divisiveness by continually keeping in touch with all the segments of the community and encouraging them to contribute their ideas. Many of these ideas were, in fact, incorporated into the proposals and strategies for negotiations.

These extensive efforts were successful in helping facilitate continuing contact with the community and in encouraging participation by as many people as possible. Our negotiating team for any particular session, for example, usually included a minimum of ten people who were associated with community groups and social agencies in the city. Furthermore, the meetings also served as a mechanism whereby the community and agency people could further develop their own skills in planning strategy, in exercising effective leadership and in coordinating a common effort. As a result of this joint endeavor the Spanish-speaking community is now better able to act on its own behalf than it was in the fall of 1973.

Negotiations With The School Administration

Although the school system was not unalterably opposed to addressing the problems of the Spanish-speaking students, our task force knew that it was not likely to move on its own initiative. In addition to the daily problems of maintaining a large bureaucracy, the system was in the midst of a massive desegregation suit. Therefore, the task force undertook the task of defining the problem, focusing attention on it, developing an approach and making the system adopt resolution of this problem as one of its top priorities. Through the

several months of extensive negotiations with school administrators, our group acted as a catalyst and as a continuing source of pressure to make the problem visible and to force the school system to do its job of educating Spanish-speaking students.

The three main elements of the negotiation process were: identification and effective use of available resources, continuing direct contact with personnel within the school system, and persistence.

In order to benefit from available resources, we visited established programs in other cities and used them as models. We learned how those programs worked, how they were set up, what materials they used, and other relevant information. These visits helped us to understand what exists in the area of bilingual education. We became the local "experts" on bilingual education and the school system began to rely on us for help in deciding important policy questions. This gave us access to the system's decision-making process and influence over its outcome.

In addition, the visits to other programs gave us the opportunity to explore the difficulties existing programs were facing. As a result, we planned our program with those potential problems in mind and tried to alleviate the seriousness of their impact here. For instance, we knew that other programs had been designed as experimental programs which provide intensive services for only a small portion of the target population, and that in some areas the programs suffered because they were perceived as "remedial" services for the "disadvantaged". We also knew that there is a scarcity of trained bilingual education personnel and of materials developed for Puerto Rican children living in the continental United States, because most bilingual materials were designed for Chicano children in the Southwest.

Thus, we designed our program to affect *all* the Spanish-speaking children who need its services and we emphasized that instead of being a "remedial" undertaking, this program is an acknowledgment of the fact that ours is a multicultural, multilingual society and that Spanish-speaking people have a valuable contribution to make to the entire society. We also held a two-hour evening meeting in one of the local schools for the purpose of generating applications for jobs that would become available in the bilingual program. The meeting was conducted in Spanish and English and bilingual literature regarding job descriptions and required qualifications was available. School administrators were also present to answer applicants' questions.

The second component, continuing contact with school personnel, helped us develop a working relationship with people in key positions. The tenor of our contacts with the administrators varied. Sometimes our group served as a source of information and support to the administration which needed our "expertise" because we knew the community, we knew the problem and we knew what kinds of alternatives were available. At other times, we were unrelenting adversaries pitted against the administration; adversaries who turned every issue into a bargainable point and who presented non-negotiable demands. But we never allowed the negotiations to stop. At all times, there was an on-going relationship which added to the official recognition of our group as one which had the right to demand that the system be accountable.

This process of increasing accountability was central to our negotiations. In essence, it was a way of eliciting the school administration's commitment little by little. With each new commitment, no matter how small, we knew that we were gaining strength, that we were adding on to our prior accomplishments and that the system felt a greater responsibility to respond to us. The following is an example of this kind of process: At our second meeting with top school administrators, we mentioned that the two neighboring states, Pennsylvania and New Jersey, were each getting almost one million dollars a year in Title VII ESEA funds for bilingual education and that it was unfortunate that Delaware was not receiving any funds from this federal resource. One of the top administrators mentioned that maybe the thing to do was to draft a proposal, and that maybe our group should work on that endeavor. We took him up on it and started gathering data for such a proposal. A week later, the same administrator received a letter from us stating that, although we were willing to help, only the school system had the ability to gather much of the necessary data and that it was essential that it assign a full-time staff person to draft the proposal. After some additional pressure from other agencies which, in response to our request, had

started to inquire about the status of Spanish-speaking children in the school system, the staff assignment was made and two proposals were submitted to the federal government.

Once the proposals were in, we started negotiating for the hiring of a full-time adminstrator who would work on a temporary basis until the permanent bilingual director was hired, and who would start immediate planning for implementation of the program. We emphasized that, after all the work which had been done in drafting the proposals, it would be a mistake to jeopardize the program's effectiveness by failing to engage in adequate planning. Once the temporary coordinator was hired, we knew that we would have a program even if no federal funds were granted because it would now be harder for the school district to regress to the point of having no program at all for the Spanish-speaking students. It is interesting to note that, at first, some school personnel resented us for being "outsiders" who were challenging their "educational expertise". However, once the temporary coordinator was hired, this became "their" program and things began to move a little more smoothly.

The third component, persistence, for our group meant long hours, extensive meetings, and the ability to stay together to complete a long-range project. Persistence was important in helping us understand the personalities of those with whom we had to deal, in deciding who and/or what needed follow-up and how that follow-up should occur, and in helping us extract information that was not readily available but which was important to our negotiations. In short, it was our persistence which enabled us to clearly assess the situation and to speed up the process of obtaining our goals.

Moreover, persistence was essential because it helped us establish that our position was firm, that we expected explicit answers and definite timetables in response to our demands, and that we were not going to give up just because it was a lot of work nor because it took a long time. This last message was particularly important because the school system knew that there are community groups which complain with great furor and publicize issues but fail to follow-up to ensure implementation of a solution. The system's general method for dealing with these goups is to allow the outburst of complaints and then wait it out until the commotion dies down.

Why a Suit Was Never Filed

From the beginning, we considered the possibility of filing a suit on behalf of the

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Spanish-speaking children. Indeed, that was the original motivation for my visit to the schools in September of 1973.

At that time *U.S.* v. *Texas*[12] and *Serna* v. *Portales Municipal Schools,*[13] both district court opinions, provided strong precedent in favor of such a suit. In *U.S.* v. *Texas* the court, which had previously found that there had been *de jure* segregation and had ordered the consolidation of a new school district, noted:

> [There is] . . . the need . . . for special educational consideration to be given to the Mexican-American students in assisting them in adjusting to those parts of their new school environment which presents a cultural and linguistic shock. Equally clear, however, is the need to avoid the creation of a stigma of inferiority akin to the "badges and indicia of slavery" . . . to avoid this result the Anglo-American students too must be called upon to adjust to their Mexican-American classmates, and to learn to understand and appreciate their different linguistic and cultural attributes.[14]

In that case, the court ordered the creation of a unitary school system in which ". . . neither English nor Spanish is presented as a more valued language . . ."[15] and the implementation of a ". . . bilingual-bicultural instructional program which utilizes the child's language system (English, Spanish, or a blend of both) as a medium of instruction as proficiency in one or more additional language systems is developed."[16]

In *Serna,* it was conceded that the educational program at the predominately Mexican-American school was ". . . substantially the equivalent . . ."[17] of that offered at the other three elementary schools. Nevertheless, the court found that there was a denial of equal educational opportunity. The court based its holding on the fact that the curriculum was tailored to the needs of children from an English-speaking background without regard to the needs of children from backgrounds where Spanish is the predominant language spoken.[18] On the other hand, *Morales* v. *Shannon,*[19] and *Lau* v. *Nichols,*[20] which had yet to reach the Supreme Court, had held that the school system had no special responsibility toward the non-English-speaking student.

In short, these two courts were extremely reluctant to interfere in the educational process, a position likely to find favor with the courts in Delaware. And, in three out of the four cases already mentioned, the test used by the court was whether the school board had engaged in affirmative discriminatory action or had perpetuated the effects of any past *de jure* segregation. Because the Spanish-speaking community is relatively young and small and there is little history of past overt segregation regarding that community, it would have been difficult to prove discriminatory state action in Wilmington, Delaware.

In Wilmington, the discrimination lay in the school's present inaction and it had two kinds of manifestations. First, because the Spanish-speaking children were tested in English, they were probably disproportionately represented in the lower tracks. Proof of such a pattern would have constituted evidence of discrimination under *Hobson* v. *Hansen.*[21] However, it might have been difficult to obtain reliable statistics to demonstrate this fact because there was such a small sample of Spanish-speaking children in the system. And, since an even smaller number of children continued school past the elementary or middle school level, it would have been even harder to show that the children were locked into the low tracks. The fact that the black and poor children had little opportunity to escape the low tracks had been an important consideration in *Hobson.*[22]

Second, the Wilmington school system was discriminating against Spanish-speaking school children because it was failing to correct the language deficiency which they brought with them into the classroom. The essence of this argument is that in providing only monolingual English teachers, tests and textbooks, the school is treating all children as if they had the same English proficiency when, in fact, they do not. This approach had been successful in *Serna* v. *Portales* but not in *Morales* or *Lau.* In the latter case, the Court of Appeals noted that the student's language deficiency had not been caused by state action and concluded:

> The board's responsibility to non-English students under the Equal Protection Clause, . . . extends no

> further than to provide them with the same facilities, textbooks, teachers, and curriculum as are provided to other children in the district.[23]

In deciding whether or not to file a suit in the fall of 1973, consideration was given to the judicial precedents mentioned above and to the fact that *Lau* was pending before the U.S. Supreme Court. Because of that Court's decision in *San Antonio Independent School District* v. *Rodriguez*,[24] (education is not a fundamental right for equal protection purposes) the most recent Supreme Court decision in the education area at that time, it was difficult to predict that the plaintiffs would eventually prevail in *Lau*.

For these reasons, it was decided that, instead of initially relying on the judicial process for redress of the Spanish-speaking students' grievances, we would work on creating alternative remedies. Passage of state legislation providing for bilingual education was rejected as an alternative because our small group was not prepared for such a time-consuming process and because we felt that the Spanish-speaking community in Delaware is too small to exert the kind of political pressure necessary.

Since lack of funds was the main obstacle to the creation of a program and since Delaware had never received Title VII money for bilingual education, we decided to help the school system draft a proposal for such funds with built-in legal safeguards. There is, for instance, language in the proposal guaranteeing that the students will be taught English, will have academic instruction in Spanish for all who need it, and there will be activities relating to Puerto Rican and other Latin cultures. Moreover, since our group forms the core of the Parent and Community Council, we have continuing access to information regarding the program and can exert influence over its present implementation.

Looking back at the results obtained during the last year, it is fortunate that we refrained from suing at the outset. The filing of a suit could have served as a starting point for negotiating with the school system. However, it would also have set up a clearly adversarial position. It would have made it more difficult to get first-hand information about existing conditions in the school system and, because the school personnel would have felt very threatened, it would have seriously undermined the possibility of cooperation in setting up a program. Moreover, if we had started by filing a suit and had quickly obtained a favorable decision, there would, at best, be an order requiring that the school system initiate a program. That much we were able to accomplish by means of negotiations. We feel that refraining from filing a suit, pending the results of the negotiations, enabled us to get quicker results and have more influence on a day-to-day basis regarding key policy decisions. However, the threat of a suit was an effective weapon, because the school system knew that we were ready and able to go to court if that became necessary.

Conclusion

There is neither a set technique for creating a bilingual program nor a foolproof approach to encourage community participation. The strategies used by our group were developed in response to the issues which were faced at each stage in our efforts. Our approach worked for us here, and it worked in the recent past. It is hard to know whether it would be successful for another group, at another place, or at another time. The most that can be expected is that the reporting of our experience will help others to develop strategies to meet the needs of their particular situation.

FOOTNOTES

[1] Delaware Department of Public Instructions, September 30, 1973, *Racial and Ethnic Report Pupil Enrollment,* (October 29, 1973) pp.4–5.

[2] This percentage is derived from statistics cited by the school system in its application for federal funds. Under the heading "Facility in English Communication," the application notes that there were 260 children rated "poor", 150 rated "average" and 107 rated "good". "Poor" was defined as requiring "most, if not all, academic instruction in Spanish", "average" as operating with "most, if not all, academic instruction in English" and "good" as requiring no academic instruction in Spanish. See *Application for Assistance Under Title VII of the Elementary and Secondary Education Act (ESEA)* (hereinafter "ESEA Application") (February 7, 1974) p. 20.

[3] Although small and relatively young, the Spanish-speaking community is growing at a rapid rate in Wilmington. In 1963 there were about 610 Puerto Ricans in Wilmington, comprising 0.7% of the total population. More recent estimates indicate that the size has risen to 6,000 or to 7.5% of the city's present population. According to the 1970 federal census, there were only

about 2,000 Spanish-surnamed people in Wilmington. However, estimates from agency personnel serving the community indicate that the figure is between 6,000 and 8,000. See *Application* for *ESEA* funds p. 19.

[4] Meeting on September 21, 1973, at Wilmington High School.

[5] Ralph Ellison, *The Invisible Man,* (New York: Random House, 1974), p. 3.

[6] See *ESEA Application* (1974) p. 19. There are fourteen elementary schools, four middle schools, and three high schools in Wilmington. Although all but one have Spanish-speaking children, the bulk of these students are located in four elementary schools, two middle schools, and one high school.

[7] The school district's drop-out rate for all high school students is 5.4%. The official rate for Spanish-speaking students at the Wilmington High School is 28.6%. See *ESEA Application* (1974) p. 22. However, the latter statistic does not present an accurate picture because it does not include those who drop-out *before* entering high school or those who fail to attend school but are not officially counted as drop-outs because they do not withdraw through formal procedures.

It is more realistic to note that teachers who had followed the progress of their students after they had left the elementary school level, reported that many Puerto Rican children actually dropped out as early as the sixth and seventh grade. In addition, only twenty-two Spanish surnamed students graduated from Wilmington High School from 1969 to 1973 (1969–4; 1970–6; 1971–2; 1972–4; 1973–6). See *ESEA Application* (1974) p. 21. This suggests a very high drop-out rate because the school system's office of Research and Planning estimates that as early as 1969 there were already as many as sixty-eight Spanish surnamed students in that high school.

[8] A former elementary school teacher reported that English-speaking teachers in her school often seated Puerto Rican children in the back of the classroom where they would be inconspicuous. It is understandable that this kind of arrangement was more convenient for the monolingual teacher who had to worry about teaching an entire class and about controlling its behavior. After all, she could not reach a Spanish-speaking child whose language and culture she did not understand, and it was easier to have her seated quietly in the back of the room. However, such an arrangement did not do much to advance that Spanish-speaking child's academic education.

Similar findings have been made by the U.S. Commission on Civil Rights. In "Teachers and Students, Report V: Mexican-American Education Study, Differences in Teacher Interaction with Mexican-American and Anglo Students" (hereinafter "Report V") (March, 1973) p. 43, the Commission concludes: "The total picture that emerges from this study of classroom interaction is one in which Mexican-American students are ignored compared to their Anglo counterparts."

[9] The United States Commission on Civil Rights reports a similar pattern among Chicano students in the Southwest. It notes:

> In effect, the language and cultural background of Mexican-American students is virtually excluded from the school programs in the Southwest.
>
> This exclusion takes its toll on the attitudes and achievement of Chicano pupils . . . The omission of their culture, values and familiar experiences from the design of the educational program causes many Mexican-American pupils to feel that the school is an alien environment with little relevance to them. These early school experiences of Chicanos thus set in motion the cycle of lowered interest, decreased participation, poor academic performance, and lowered self-esteem which is so difficult to break in the later school years. The schools bear major responsibility for this cycle of educational failure.

See *Report V* (March, 1973) p.44.

[10] There were some students from Cuba, Santa Domingo and other Spanish-speaking countries. However, most were from Puerto Rico. Therefore, we decided to emphasize Puerto Rican culture and include other Latin and Caribbean cultures when appropriate.

Moreover, there is an emphasis on a two-way exchange. In addition to teaching the Spanish-speaking students about Anglo-American and Afro-American culture, its goal also is to teach the Anglo students about Latin culture.

[11] The following is an example of the importance of listening to local people who have negotiated with the system in the past: one of these people expressed frustration over the fact that the system is always willing to use the community to help it get federal funds but is unwilling to use its own local funds and that reliance on federal funds alone is unwise because, when those funds end, one is left without a program. As a result of this comment, we developed a two-pronged strategy: helping the school system obtain federal moneys *and* demanding that there be a local commitment to the program. At present, part of the program is funded through Title VII and part is through local money.

[12] 342 F. Supp. 24 (E.D. Tex. 1971), affirmed 447 F. 2d 441 (5th Cir. 1971), 466 F. 2d 518 (5th Cir. 1972).

[13] 351 F. Supp. 1279 (D.C. N.M. 1972).

[14] *U.S.* v. *Texas* p. 38.

[15] *Ibid* p. 30.

[16] *Ibid* p. 31.

[17] *Serna* p. 1281.

[18] See *Serna* p. 1282.

[19] 366 F. Supp. 813 (E.D. Tex. 1973).

[20] 483 F. 2d. 791 (9th Cir. 1973), reversed 414 U.S. 563 (1974).

[21] 269 F. Supp. 401 (D.D.C. 1967) *Sub. nom. Smuck* v. *Hobson,* 408 F. 2d. 175 (D.C. Cir. 1969).

[22] *Ibid* pp. 468-70, 476.

[23] *Lau* pp. 798-99.

[24] 93 S. Ct 1278 (1973).

The Massachusetts Transitional Bilingual Education Act:

Two Years After

by Frederick P. Lewis

The Massachusetts Transitional Bilingual Education Act became law in February of 1972[1] and applied to a full school year beginning the following September. Two years have since passed, and while evaluation of the Act's success or failure as an educational measure may be premature, it is possible to report some impressions[2] and draw some conclusions about the legal, political and administrative problems of implementing such legislation.

Unique in several respects, the statute goes far beyond the remedial English instruction of "English as a Second Language" (ESL) programs. It calls for a full-time program of instruction covering all subjects normally received by public school children, to be offered both in English and in the primary language of students of limited English-speaking ability. Instruction in the English language and in the history and culture of the child's native land, plus the study of American history, is also mandated.[3] Furthermore, the Act is not simply a vehicle for a few demonstration programs; it provides that such full-time programs of bilingual education be offered to all eligible children within a local school district. Finally, there is no local option; compliance is required by every local district which comes under the terms of the Act.[4]

All local school districts in Massachusetts are required to ascertain annually the number of children of limited English-speaking ability in their system and to classify them "according to the language of which they possess a primary speaking ability." The presence in a school district of twenty students of limited English-speaking ability within any given language classification necessitates the establishment by the district of a program in transitional bilingual education for that classification.[5]

Enrollment in a bilingual program is required of every school age child of limited English-speaking ability for a period of three years or until the student achieves a level of English language skills which would enable him or her to perform successfully in English language classes, whichever comes first. Parents do have the right, however, to prevent their child from being placed in a bilingual program. While the three year period may be extended with joint parental/school district approval in individual cases, bilingual programs are, as a rule, intended to be transitional with the children integrated into the educational mainstream after the three year period. Even during this period, the Act provides for full participation by bilingual program students in "courses or subjects in which verbalization is not essential to an understanding of the subject matter, including, but not necessarily limited to art, music and physical education." It also requires that "practical and meaningful opportunity be provided the students to participate in the extracurricular activities of the public schools." Wherever possible, transitional bilingual education classes must be held in regular public schools rather than in separate facilities.[6]

Implementation of the Massachusetts Legislation

To oversee implementation of the Act, the legislation created a Bureau of Transitional Bilin-

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gual Education within the Massachusetts Department of Education,[7] which is supervised by the State Board of Education and its Commissioner.[8] The Board created an Advisory Council on Bilingual Education soon after passage of the Act, whose membership reflects the diverse composition of the coalition which successfully fought to secure enactment of the legislation. The Advisory Council played the principal role in preparing the implementing regulations[9] which the Board promulgated in the spring of 1972 and it continues to play an influential role, acting as an advocate of bilingual programs with a degree of vigor and independence unusual in Massachusetts state educational advisory committees.

The Bureau's "waiver file" indicates that the largest number of implementation disputes have occurred over such crucial issues as pupil-teacher ratios and the related issue of teacher aides, the age spread of children grouped together in bilingual programs, and the completeness of the "full time" program being offered.[10]

Regulations on bilingual education provide that the maximum student-teacher ratio shall be 15:1. When a native speaking teacher's aide is assigned to a class, or a non-native speaking teacher's aide is assigned to a class taught by a native speaker, the ratio may be 20:1.[11]

The age spread in bilingual programs is to be no more than three years from the oldest to the youngest child, except in kindergarten programs where there is to be no more than a one year spread.[12] In establishing programs, priority is to be given to younger children,[13] and the regulations reaffirm the statutory command that a full time program be offered, consisting of all subjects and courses normally taken by children of equivalent grade levels.

The Census Issue

However, what may be the most important implementation issue is not reflected in the waiver file. It arises because the state has lacked the staff resources to monitor closely the local processes of counting, evaluating and classifying children. Although the Bilingual Act requires an accounting of children,[14] an effective state mandate requiring an annual door-to-door census has only recently been promulgated[15] and it remains to be seen whether it will be effectively implemented. There were several reasons for the delay: the need to coordinate the various school census requirements contained in different Massachusetts education laws; the fact that the statutory language in the Bilingual Act and in other census statutes allowed for conservative interpretations of state authority in this area; and local resistance to the effort and expense involved in a door-to-door census.

The Massachusetts general school state aid formula rewards a district partly on the basis of the numbers of school-attending children;[16] the Bilingual Act reimburses all extra expenses growing out of the provision of bilingual education programs. Nevertheless, there has been no great rush to search the streetcorners for unenrolled students of limited English-speaking ability. Not only would confirmation of their existence be an embarrassment to school authorities, but despite the financial inducements, some authorities might find the inclusion of these children to be more "trouble" than it is "worth".

In the absence of a reliable census mechanism, the degree to which bilingual programs are fulfilling one of the principal goals of the Act's proponents by attracting and holding children who would otherwise fail to attend school can only be estimated.[17] Furthermore, without additional resources, the state Bilingual Bureau is not able to review effectively the process by which children in school are evaluated and classified. Some observers believe that significant numbers of children are not receiving needed bilingual services because their English language deficiences either have not been acknowledged at all, or have been understated by local districts.

The Transition Issue

Transitional Bilingual Education programs have drawn a generally good reception among the groups for whose childrens' benefit they are intended. However, this is not an area without some difficulties, and there have been cases where parents have preferred immediate pressure on their children to learn English. At the opposite pole, some observers expect that the concept of transition after a three year period may create problems. While children in bilingual classes do appear to be learning, given the initial educational handicaps which many possess, it seems likely that some children will not be able to integrate with regular

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students on truly equal terms at the end of only three years. But the concept of bilingual education as transitional is integral to the legislation, and many of its strongest supporters argue vigorously that whatever its difficulties, integration is essential if the children are to learn to live in the larger community. This insistence is likely to come up against firm parental resistance to "premature" integration. Parents who see their children progressing in bilingual classes may be understandably reluctant to risk this progress for the less concrete promise of what integration may ultimately give their children. It is a potential conflict which may be a difficult test for proponents and administrators of the Massachusetts program.

Teacher Issues

Teacher issues have created difficulties for bilingual program proposals in some places but these have not been sharply contested in Massachusetts. Although the Bilingual Act exempts teachers in bilingual programs from what was, at the time of enactment, the general Massachusetts teacher certification statute, the Board of Education's regulations require such individuals ultimately to fulfill what are essentially the normal requirements for certification in order to continue with permanent employment. United States citizenship is not required for certification, and uncertified teachers may work temporarily in programs where necessary.[18] On the whole, the state's schools have not had great difficulty in securing for bilingual programs teachers who are capable of qualifying for certification. Of course, if bilingual programs were mandated in many other states, the problems of finding enough qualified teachers could become serious.

One of the principal obstacles to passage of similar legislation in other states with large numbers of children of limited English-speaking ability is the opposition of organized teacher groups.[19] These groups object to programs which, at a time of widespread teacher unemployment, threaten to divert scarce monies to a large number of new job positions for which most of their membership would not qualify. There was no such opposition in Massachusetts; apart from an insistence that professional standards be maintained in the traditional ways, organized teachers have been very supportive of the bilingual concept. However, the scope of the program in Massachusetts, even if fully implemented in places like Boston, would not presently involve a really threatening diversion of resources.

Fiscal Issues

The state Board of Education can conceivably respond to major or persistent disregard of the law with formal hearings leading to the shut-off of all state school aid.[20] However, the ordinary device for achieving compliance (beyond the use of moral suasion) involves withholding only the extra reimbursement funds that the legislation provides for all bilingual program costs that exceed the average per pupil cost of students in regular programs of equivalent grade levels.[21] As a matter of policy the Bilingual Bureau does not agree to the reimbursement of programs or portions of programs which do not meet its standards. Despite this official policy, it has been debatable in some cases whether any sanction was actually imposed, since the Bureau must normally accept a local school district's accounting as to the costs of particular parts of its programs.

One final implementation difficulty also centers around the Act's state aid mechanism. Although as mentioned earlier, the legislation provides for full reimbursement of expenses above a local district's average per pupil expenditure for children of equivalent grade levels,[22] and although in Massachusetts local school boards (called school committees) have complete or very substantial fiscal autonomy,[23] most state educational reimbursements, including the Bilingual Act reimbursements, are credited to the municipal treasury rather than directly to the school budget.[24] At the local level, this often tends to obscure, politically, the fact that state reimbursement occurs. Furthermore, although state reimbursement ultimately brings back to towns and cities all extra funds expended upon bilingual programs, the obligation upon a locality to raise the funds itself during the initial start-up period may also create short-run political resistance. Therefore, many people connected with the Massachusetts program agree that implementation would probably have gone more smoothly if the state funds earmarked for bilingual education had been available "up front" for ongoing payment directly to the school committees rather than provided on a reimbursement basis a year later to the general municipal treasury.[25]

Progress and Resistance

Despite these difficulties, disputes about the accuracy of bilingual census statistics, and the limited technical assistance which the small bilingual bureau has offered local districts,[26] there is general agreement that progress is being made in implementation in the sense that every year greater numbers of children of limited English-speaking ability are receiving some significant portion of the required bilingual education services. The director of the Bilingual Bureau believes that the next year may bring the figure to the vicinity of 75%.[27] Critics of the implementation process question the validity of official estimates and reject the concept of partial implementation. They point out that the legislation requiring full programs for all eligible children went into effect in 1971 and argue that the state Department of Education lacks the authority to "waive" statutory requirements. But most of the original proponents of transitional bilingual education in Massachusetts seem willing to accept implementation by phases provided that the rate of progress seems substantial.

The principal resistance to the implementation of the program has not come from the Boston schools. After some initial disputes with the state which threatened to develop into a major confrontation, Boston school officials made significant program improvements in early 1974. Since Boston is the home of approximately one-third of the state's children in need of bilingual services, success there is critical to the program.[28]

In the eyes of state officials, primary resistance has come from some of Massachusetts' smaller cities. While the limited scope of the problems which these cities face in implementing bilingual programs might seem to make them less difficult to resolve than those of the state's largest metropolis, these smaller cities tend to lack Boston's sizeable constituency for promoting educational reform.

The Significance of the Massachusetts Legislation

In recent years, the most dramatic educational reform legislation in Massachusetts has accepted the established concept of compulsory school attendance and used it as a lever to attempt to force the public schools to deal with disadvantaged groups.[29] The strategy was best personified in the group organized under foundation sponsorhip as the "Task Force on Children Out of

School." This group and its successors called attention to, documented and identified the characteristics of the large numbers of Massachusetts children of school age who were, in fact, not attending school.[30] They and their allies have insisted that the children be brought back into school and attribute the causes of their non-attendance to the failure of programs offered by the public schools to adequately meet their special needs. They have pressed the legislature for new statutes that would require local districts and the state Department of Education to meet these needs. One of the two principal results of their efforts is, in fact, the Massachusetts Transitional Bilingual Education Act.[31] (The other is the new comprehensive Special Education Act, designed to reduce stigmatizing classifications and to provide for maximum feasible integration of "children with special needs" into the regular school program.)[32]

There is a temptation to view the passage of the Massachusetts bilingual legislation as signalling a dramatic change in educational and cultural attitudes.[33] Certainly it is true that most of the Act's supporters fought vigorously and successfully for inclusion of the requirement that children in bilingual programs be taught the history and culture of their native land. However, it is also true that the number of children in bilingual education in Massachusetts, even with full implementation, will not be so great as to seem to threaten the hegemony of "American" culture.[34] It may also be noteworthy that a piece of supplemental legislation designed to ensure the continuity of instruction in native language and culture after transition by requiring that such courses be offered in every sizeable elementary and junior high school whenever twenty parents petition for them, failed of enactment during the recent session of the Massachusetts legislature.[35]

While resistance to the idea of cultural pluralism has generally declined[36] and the concept may continue to gain legitimacy as the number of bilingual programs increases, it is important for those in other states seeking enactment of similar bilingual legislation to recognize that much of the critical political support for the Massachusetts Transitional Bilingual Education Act was acquired in response to the pragmatic argument that bilingual education represents a superior method for achieving some of the traditional ends of American public school education. Unfortunately, it remains likely that opposition to bilingual programs will be greatest where the need is most critical. Where the percentage of students who could benefit from bilingual programs is very high,

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the "cultural" issue, compromised and obscured in Massachusetts, may become more intense. More important in the current economic situation is the opposition which may arise from teacher groups to a program which threatens to create a large number of jobs which most of their members may not be qualified to fill – again a problem that Massachusetts avoided.

Nevertheless, given the limited scope of court decisions requiring bilingual education services[37] and the inadequacy of federal appropriations, new or strengthened state legislation may still offer the best route to bilingual education in many places. Under the circumstances, the most satisfactory results will probably come from carefully and persistently building the case for bilingual education by documenting the large numbers of children of limited English-speaking ability who are not in school or who are attending but not really learning, principally because they do not understand the language of instruction or cultural climate. The political reality seems to be that the promise that bilingual education can help pragmatically to implement traditional American educational values remains the source of its broadest appeal.

But the Massachusetts experience also demonstrates once again that passage of detailed reform legislation does not insure that reform will occur in conformance with the terms of the statute. Of course those seeking educational change in Massachusetts knew this, and they certainly did not ignore implementation issues. Nevertheless, the high level of expertise which they achieved in their work with the legislature was not matched by an equivalent facility in the area of state and local administrative processes. The result for the Bilingual Act has been a gradual, somewhat uneven implementation, not overly disturbing to established administrative structures, and offering a level of services to children of limited English-speaking ability that still falls short of the legislative mandate. This situation is not unusual; indeed it may be a typical reform experience. But it is not inevitable. If the same degree of energy, skill, and forethought that has been evident in the legislative struggle is applied to the administrative process, faster and more effective implementation of educational change can surely be achieved.

FOOTNOTES

[1] The legislation was enacted as Chapter 1005 of the Acts of 1971 and went into effect ninety days later. The preponderance of the Act's provisions can be found in Chapter 71A of the Massachusetts General Laws. Other portions are in General Laws (G.L.) Chapter 58, section 18A and Chapter 69, section 35.

[2] The impressions and conclusions reported here are drawn primarily from several interviews and conversations with state and local officials. In most cases there is a consensus on the point reported though views on its significance vary with the perspective of the observer. Therefore, with certain exceptions, I have not attributed these impressions to any particular person and in the last analysis, they must be considered my own.

[3] G.L. Chapter 71A, section 1.

[4] G.L. Chapter 71A, section 2.

[5] G.L. Chapter 71A, section 2. At its option, a local school district may establish a bilingual program and obtain state reimbursement even when it has less than twenty children within a given language classification.

[6] G.L. Chapter 71A, section 2, 3, 5. Parents must be notified in writing in their native language if their child is enrolled in a bilingual program. Parents have an absolute right to withdraw their children at that time or at the end of any semester thereafter.

Parental influence upon bilingual programs is further strengthened through a state regulation mandating that each local district create its own Parent Advisory Council to the program. And the state has required that compliance plans prepared for its approval must first be submitted to the chairman and each of the members of the local Parents Advisory Council. See the *Regulations of the Mass. Board of Education for use in Administering Programs in Transitional Bilingual Education,* (hereinafter cited as *Bilingual Regulations*) paragraphs 38–42. These regulations are available from the Office of the Secretary of State, State House, Boston, Mass.

[7] G.L. Chapter 69, section 35.

[8] G.L. Chapter 15, sections 1e, 1f and 1g.

[9] See note 6, *supra*.

[10] File on Waivers, Director, Bureau of Transitional Bilingual Education, State Department of Education, Boston, Massachusetts.

[11] *Bilingual Regulations,* paragraph 24.

[12] *Bilingual Regulations,* paragraph 26.

[13] *Bilingual Regulations,* paragraph 30.

[14] G.L. Chapter 71A, section 2.

[15] *Board of Education Regulations Pertaining to the Census of School Age Children,* Voted June 25, 1974. (Available from the Office of the Secretary of State, State House, Boston, Mass.)

[16] G.L. Chapter 70, section 2, paragraph (e).

[17] Interview, Sister Francis Georgia, Bilingual Advocate, Bureau of Equal Educational Opportunity, Mass. State Department of Education, June 7, 1974. Official Bilingual Bureau documents have been published in the past with three different estimates and accordingly, three figures estimating the percentage of children requiring services who are actually receiving them.

[18] G. L. Chapter 71A, section 6; Board of Education Regulations For Certification of Teachers of Transitional Bilingual Education, Voted May 23, 1972.

[19] Perhaps the most prominent leader of organized teachers who has spoken in opposition to bilingual proposals is United Federation of Teachers' President Albert Shanker.

[20] See G. L. Chapter 15, section 1g. See also, *School Committee of Boston* v. *Board of Education,* 292 N.E. 2d. 870, 873; 302 N.E. 2d 916, 919–920 (1973).

[21] Chapter 71A, section 8; however, state reimbursements may not be used to displace federal funds used to assist children of limited English-speaking ability.

[22] G.L. Chapter 71A, section 8.

[23] G.L. Chapter 71, section 34.

[24] G.L. Chapter 58, section 18A.

[25] In response to considerable pressure, the Massachusetts legislature did agree in 1974 to appropriate some funds "up front" for localities beginning implementation of Massachusetts' new Special Education Act. It is also noteworthy that this recently enacted comprehensive measure does contain a provision directing the state reimbursements for this program back to the local school committees and the succeeding year's school budget. Chapter 766 of the Acts of 1972, section 3 amending G.L. Chapter 41, section 35.

Following upon these precedents, the Massachusetts Board of Education will introduce for the 1975 legislative session, comprehensive new proposals for the reform of all Massachusetts state aid to education. Among other features, these proposals, if enacted, would meet all the criticism of the financing of bilingual programs herein described. Furthermore, although the total annual state aid reimbursement limit of four million dollars, contained in the existing bilingual legislation has not yet been reached, the new proposal would eliminate that limit.

[26] "Part I, Program Report—Programs, Objectives, Activities"; *Annual Report, Bureau of Bilingual Education*—Year Ending June 30, 1973.

[27] Interview, Bilingual Bureau Director Ernest J. Mazzone, July 26, 1974.

[28] Cynics suggest that in light of the freezing of federal education funds by an HEW hearing examiner, the bitter ten year dispute with the state Board of Education over racial imbalance and the Boston School Committee's position as defendant in a federal desegregation suit (which recently resulted in a judgment against Boston), city school officials simply could not afford to risk major legal and political confrontation over their treatment of children of limited English-speaking ability.

The effects of racial integration upon bilingual classes in Boston is uncertain. If it means that children clustered in bilingual programs will be more widely dispersed after their transition, efforts to provide them with remedial assistance where appropriate may be impaired.

[29] John Holt, Ivan Illich, and Edward Banfield, among others, have challenged the notion of compulsory school attendance, and suggested more radical alterations in public education.

[30] "The Way We Go to School: The Exclusion of Children in Boston," A Report by the Task Force on Children Out of School, 1970.

[31] Kobrick, J. "The Compelling Case for Bilingual Education," *The Saturday Review,* April 29, 1972, p.54; Sister Francis Georgia, "Bilingual Education: What the Bill is all about," *The Massachusetts Teacher,* May/June 1971, p.36.

[32] Chapter 766 of the Acts of 1972.

[33] Vermette, M. "Why Massachusetts needs a new law for Bilingual Pupils," *The Massachusetts Teacher,* May/June 1971, p.38, 39; Gordy, M. "A Case Study in Participatory Democracy in the Passage of the Massachusetts Bilingual Education Bill," Unpublished Senior Thesis, Tufts University.

[34] Assuming full implementation, taking the highest estimates of the numbers of children currently requiring services would still involve less than 4% of Massachusetts Public School students with bilingual programs.

[35] This legislation, entitled "An Act Providing for the Addition of Language Courses and Culture Studies in the Curricula of Public Elementary and Junior High Schools," will be reintroduced in 1975 and its supporters expect to be better organized. If it is enacted it will, when coupled with the existing petition statute, make it possible for parents to petition for bilingual maintenance courses at all grade levels.

At the high school level the concept of the bill is less exotic in Massachusetts than it might seem. For many years Massachusetts laws contained provision for twenty parents to petition for high school courses in various foreign languages. Two years ago these statutes were superceded by a statute which now provides that twenty parents can petition for *any* course not offered in the regular high school curriculum and, provided a qualified teacher is available, it must be offered. Like this statute, the proposal which failed of enactment this past year would have applied only to schools of over 150 students.

[36] Of course bilingual education is not unknown in America. Before World War I it was particularly common in areas with large numbers of German-Americans. See generally, Anderson and Boyer, *Bilingual Schooling in the United States,* 2 vols. U.S. Government Printing Office, Washington, D.C., 1970.

[37] *Lau* v. *Nichols,* 414 U.S. 563, 94 S.Ct. 786 (1974); See notes in *Inequality in Education,* #16, March 1974, p.58 and #17, June 1974, p.64.

The Massachusetts Transitional Bilingual Education Act:

Problems in the Classroom and Possible Legislative Responses

by Peter Roos and Emma Chavez Roos

The Massachusetts Transitional Bilingual Act has been a major breakthrough in attempting to offer a meaningful education to children whose native language is not English. A previous article in this issue discussed the theories and major provisions of the TBA.[1] This article will indicate from a classroom perspective where some of the problems in implementing these theories and provisions lie, and suggest some possible solutions. Some of the problems derive specifically from the TBA approach and some are inherent in the implementation of any bilingual program. It is hoped that this discussion will aid in the drafting of other laws or the implementation of those laws to avoid these pitfalls.

One syndrome of problems, unique to a transitional approach to bilingual education, springs from the need to balance English language instruction with dominant language instruction. Even though resistance to the bilingual concept may have been overcome in the process of setting up a bilingual program, it still remains necessary to recognize possible political or administrative barriers which conflict with good pedagogical sense. One must fight to insure that political expediency does not cripple educational efficiency in the question of which language should be given greatest emphasis.

Secondly, it is important to identify and address a series of problems that can be characterized as integration-segregation issues which are inherent dangers in any bilingual schooling plan.

Thirdly, we will discuss the massive need for services, materials and curriculum in the language of instruction. To fail to provide these to students in a bilingual program while at the same time providing them for the "regular" program defies good educational practice and raises serious legal questions concerning unequal resources.

Finally, we will touch upon the need for viable parent advisory councils. In most Massachusetts communities with bilingual programs the mandated parent advisory councils fail to accomplish effective parental involvement and control over the program, as was envisioned. This crucial concept has to be revisited to determine how one can make these councils and those mandated by Title 1 effective.

Balancing the Languages of Instruction

For the purpose of this discussion let us assume that a transitional program of some form is desired by a majority of the non-English speaking community, or that such a program is the only one that is politically feasible. We do not by this discussion intend to approve or disapprove of this approach as compared with other non-transitional type approaches.

The TBA mandates that all required courses in the curriculum be repeated in *both* the dominant language of the child *and in English*.[2] This requirement, apparently rooted in political compromise, flies in the face of all reason—pedagogical or otherwise. Unless it is envisioned that there be simultaneous instruction in both languages, it imposes an impossible burden on the classroom

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teacher; in essence it requires a double school day for the child. It is unlikely that students are now receiving and following each academic subject in both languages, and the impracticability of this requirement leads directly and indirectly to some substantial violations of both the spirit and letter of the law. There is a tendency by some school districts to hire "English as a Second Language" teachers in equal numbers as bilingual teachers. This is presumably in part because of the required language balance described above. If not required by the law, it certainly would seem to be a nonchallengeable response to it. The inevitable consequence of this employment pattern is that some substantive courses are taught in English and some are taught in the child's native language. This undermines one of the major justifications for bilingual education, namely, that a child is more likely to be able to advance at a normal pace in substantive areas if he or she understands the language of instruction. Very little educational, moral or legal justification can be advanced for a program that separates minority children from the majority and then fails to provide them with the primary service underlying the justification for the segregation. Yet, absent a change from the dual language balance mandated by the TBA, or without some further limiting factors, this effect appears inevitable.

A second consequence of the attempted language balance struck by the TBA is that children just beginning their school experience spend their time attempting to learn two languages at once—their dominant language and English. Some classroom teachers have observed that the result is to seriously confuse these young children and to inhibit their ability to learn either language well. A primary facet of early school instruction is in language arts, and the vast differences which exist between languages can cause crippling confusion at this vital stage in a child's educational career.

A third problem caused by the dual language-of-instruction requirement is its failure to address the issue of whether a child who enters school with a greater understanding of English, or one who is in the third (and presumably final) year of participation in bilingual education, should receive more instruction in English than a child who enters a bilingual program knowing no English. Although we personally oppose a "weaning away" from the native language approach, some teachers, faced with the problematic division of responsibilities between bilingual and ESL teachers described above, feel that such an approach is a reasonable response to this situation.

The possible legislative responses to these problems caused by the TBA dual language approach are several. Basically, an alteration of the simultaneous two language requirement of the TBA would seem to be in order. The transitional bilingual program has two primary linguistic goals: (a) insuring, through dominant language instruction, that when the child transfers to the English-speaking class he is substantively on the same level as the English-speaking children and (b) is able to compete with them in the English language. The first goal would seem to mandate that all substantive courses be given in the child's dominant language; the second goal is satisfactorily accomplished by carving out a lesser part of the day for concentrated "English as a Second Language" (ESL) instruction. Logically, then, to best accomplish the goals of a transitional program compels a recognition that for the duration of the program greater time and emphasis must be placed on instruction in the native language. It must be recognized that the so-called fifty/fifty balance required by the TBA is an impossible task which results in forcing administrators and teachers into unlawful aberrations which ultimately undermine the basic goals of the program. The problems caused by foisting two languages simultaneously on the child beginning school should be addressed by legislation. Such legislation should be designed to address or avoid this problem, by providing that a child starting school in a bilingual program should not be given ESL instruction until the second year; or until the child's proficiency in his or her native language is ascertained.

The problem of dividing children according to proficiency in English would, in part, be resolved by a revision of the language-of-instruction balance. It is the simple fifty/fifty division, resulting in the hiring of equal numbers of ESL and bilingual teachers, that seemingly has led to attempts to force children with greater English proficiency into spending more time in English-speaking classrooms. The problem is resolved in part only because some arguments might still be made for weaning the student away from his dominant language and into the English-

language program. We believe that it is impossible to set meaningful standards for such a process and consequently this approach raises the substantial possibility of putting into the hands of a school administrator the ability to create a program of his or her own vision – contrary to legislative provisos. Further, to opt for a transitional program is already a substantial compromise in terms of language maintenance, and no further compromise should be effectuated.

Several other ancillary language balance issues are either not addressed or inadequately addressed by the TBA. At the end of three years a child can be transferred to the English language program even if he or she is linguistically incapable of competing in that program. Continuance in the program is discretionary with the school committee. It would serve the goals of this legislation to require the school to show competence in English before tranferring a student to the regular program (assuming parental desire for the child to remain in a bilingual program.)

Once transition out of a bilingual program is effectuated, it would seem important to enable a student to maintain and build upon his or her dominant language proficiency developed while in the bilingual program. The Massachusetts legislation now fails to require districts to offer more advanced courses in the languages in which bilingual programs are available.

Integration Related Problems

It must be recognized that bilingual programming often entails some degree of segregation.[3] History teaches us that segregation is an invitation to discrimination – covert, overt, intentional or mindless. Experience with the Massachusetts TBA indicates that all of those forms of discrimination are present. Some can be mitigated by legislation; others will have to be resolved by sensitive administrators.[4]

The TBA makes one attempt to bridge the gap between students in the bilingual program and others by mandating integration in those courses in which verbalization is not essential. However, even this attempt can be undermined by bigotry and/or administrative recalcitrance. Typically the bilingual program services a substantially smaller student population than the "regular" program. Thus, when school officials start scheduling integration, they integrate bilingual children *into* the previously established regular program. This has resulted in a disastrous consequence. Small numbers (2–3) of bilingual children are placed in a classroom with 20–25 children who are studying in the "regular" program. The result is that the homogenous majority group which spends most of its daily schedule together turns against the bilingual children as outsiders. A closer proximity to parity would alleviate the ingroup-outgroup conflict and would be much more likely to result in meaningful integration. As it is, no integration is accomplished and fear precludes much learning. This same problem is often exacerbated by the scheduling of bilingual children with children who are of a substantially different age. It seems likely that this scheduling problem will exist to some extent wherever the bilingual program is likely to be smaller than the "regular" program. If one has any hope of making integration work, this problem should be addressed by regulations.

The scheduling problem – and the approach described above – is symptomatic of a larger problem obviously not confined to bilingual education, but highlighted by it. Simply, this is the failure to recognize that intercultural relations are just as crucial to a school curriculum in a pluralistic society as are reading and arithmetic. A first step, and one that should be mandated by law, is to insure that faculty members, from principal on down, be involved in sensitivity sessions or, at a minimum, sessions to familiarize them with the nature and goals of the bilingual program. We have encountered teachers who were so unfamiliar with existing programs that they asked a bilingual teacher "What do you teach those retarded children?". We have encountered on a regular basis a perception by school officials and teachers that the bilingual program, its children and its needs, had no relationship to the rest of the school. This is not unexpected, given the failure to develop bridges across an inevitable gap. The gap is made more inevitable by the creation of a direct line of command to a bilingual director which leaves the principal in a somewhat ambiguous position; this may well be met by indifference to the program.

At the student level, antagonism and distrust often pepper the relationship between bilingual and non-bilingual students. Mandated sensitivity programs for students would be a step toward

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You copied the sentences in perfect English, you got all the words right. I'm afraid I just don't see what it is that you don't understand!
1. I play third base.
2. Washington is the Father of our country.
3. I love hot dogs.
SIPRESS

Cartoon by David Sipress

alleviating these problems. If schools cannot voluntarily perceive that such programs would alleviate some of their serious disciplinary problems and would serve important educational interests as well, then they should be required by law to implement them.

Native Language Services and Curriculum

The creation of a bilingual program requires a substantial initial expenditure of resources to provide adequate native language materials and curriculum. It is vital that school districts be prepared to assume these extraordinary expenses.

Although Massachusetts provides additional aid for the extra costs of the bilingual program, there have been two serious stumbling blocks to the provision of native language services and materials. The first is that no money is provided directly to the schools at the inception of the program, but rather at the end of the first year and every year thereafter. Thus, during the crucial first year of the program, money must be extracted from the local education agency which inevitably perceives itself as hard-pressed and which, in any case, may well not be sensitive to minority children's needs. Thus the program is likely to start out at a slow pace with regard to curriculum materials and student services, submit an unduly low reimbursement claim to the state, and thus initiate a cycle from which the program never recovers. One obvious solution to this very serious deficiency is to provide seed money to the local district for these areas of programming.

The second problem may well be unique to Massachusetts. Here state reimbursement for the costs of the bilingual program is made to the city rather than directly to the school system. The system frequently has problems getting all of this money since the city is not legally required to turn it over. The result is a hesitancy on the part of the local system to spend money which it might not be able to recoup.

On a somewhat different level, the creation

of a meaningful bilingual program requires a recognition that bilingual children have the same need for special services as do English-dominant children (indeed, even without a bilingual program these services should be provided in the only effective manner possible—the child's native language). Testing for exceptionality and the ultimate provision of special services should be done in the child's native language. It is manifestly inadequate to provide special services to the child in a language he does not understand. It is manifestly discriminatory to provide services for English-dominant children while denying them to bilingual children. While this unequal provision of services is outlawed by the Massachusetts law, the reality is that districts are often hesitant to spend the money necessary to effectively meet the needs of these children. To avoid this discrimination, the monitoring of a bilingual program should include a critical examination of the extent to which special services are provided to bilingual children.

Parent Advisory Councils

Parent Advisory Councils under the TBA have had effective input in those districts in which there were parent leaders and have failed where there were not. In other words, effective PACs have not been institutionalized by the TBA.

Parent Advisory Councils fail for many reasons. Some of the reasons may well be beyond the ability of law or regulations to remedy; some are clearly remediable. One common reason is that school officials intentionally cloak themselves in the armor of "expertise," leaving parents diffident to challenge the "experts." One mechanism for breaking down this partly natural, but often fabricated, barrier to effective parental involvement is to insure that the councils have an adequate budget to hire their own "experts" to advise them.

Another common reason for the failure of these councils is that they are so bereft of real power that the parents view them as a sham and unworthy of their generally limited free time. Although political reality may prohibit a real transfer of power, some lesser steps may be possible which would somewhat enhance parent power. Assurance of some control over curriculum and hiring and firing may be obtained by requiring that refusal to heed council recommendations must be preceded by written justification. A requirement that the council do its own evaluation of the program and publicize the results may have some effect. These are just a few of the ideas that have been tried. Obviously, many more possibilities exist. The end goal, however, must be to shift some real power to these councils. In its absence, the parents will see the councils for the sham they are and refuse to participate.

Although we are not able, in this short article, to provide solutions to this very difficult problem, we wish to emphasize, for those modeling laws upon the TBA, that wholesale adoption of the Massachusetts law and regulations will not necessarily accomplish effective parent involvement. We suggest that additional provisions, such as those mentioned above, be developed.

Programs in Massachusetts have marked a giant step forward in the field of bilingual education, and the existing legislation includes many fine provisions which deserve emulation. However, the problems discussed above should be addressed in order to more effectively meet the educational needs of non-English-speaking children.

FOOTNOTES

[1] See "The Massachusetts Transitional Bilingual Education Act: Two Years After", by Frederick P. Lewis, in this issue.

[2] Massachusetts General Laws, Chapter 71A, Section 2.

[3] See "Bilingual Education, Segregation, and a Third Alternative", by Jose A. Cárdenas, in this issue.

[4] One aspect of this issue is whether a bilingual program which segregates children for the better part of the day violates Title VI of the 1964 Civil Rights Act, 42 U.SC 2000d, or regulations promulgated pursuant to the Emergency School Assistance Act (ESAA) 20 U.SC 1601 *et seq.* Specifically, 45 CFR 185.43 prohibits segregation for more than twenty-five percent of the school day by any recipient of ESAA funds unless the segregation is the result of a "bona fide ability grouping as a standard pedagogical practice." HEW's Office for Civil Rights has taken the position that an entirely segregated bilingual school cannot be justified under the above exception; however, a program which is part of a larger school which contains non-minority students would be acceptable even if the better part of the school day is spent in segregated bilingual classrooms, as long as students are integrated for those subjects not dependent on verbal skills. Thus, the Massachusetts approach does not appear to run afoul of federal law unless the bilingual children are totally segregated into a separate school.

Training Teachers for Bilingual/Bicultural Education

by Nelson Vieira

The realities of bilingual/bicultural education programs do not solely nor primarily rest within the hallowed domains of good will, compassion and the mosaic view of American cultural pluralism. It is important to design the best type of program for a given school as well as to define goals in performance terminology. It is also absolutely paramount that a clear picture of its curriculum, activities and general policy regarding staffing and training be understood by the school's administrators, teachers, paraprofessionals, and PTA. Careful and honest communication about the general direction and policy of a bilingual/bicultural project can avoid misunderstanding and mistrust as well as the misuse of time, energy and money. With well-known and well-announced guidelines for structuring, scheduling, enrollment, and above all, staffing and training, there is at least the presence of a professional cohesiveness so necessary for success.

This article, dealing primarily with Portuguese programs, will examine an essential component of bilingual education projects—the staff. The discussion will relate to such items as hiring native-language-speaking teachers, language proficiency and qualifications, certification, training, teacher in-put, staff relations with the community, and continuity between training experiences and teaching. Besides being a vehicle to air out some issues that have over the last five years become only too familiar to many bilingual programs, this article is also a plea for open discussion of these issues between parents, directors, administrators, trainers and teaching staff.

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Teacher Hiring: Language Proficiency and Cultural Compatibility

The director of a bilingual education project frequently is faced with a frustrating search for teachers with pedagogical experience, the linguistic and cultural knowledge of a native-speaker, as well as the credentials needed for state certification. Administrators are frequently hard-pressed to find teachers who can function on all linguistic levels in two languages, across a variety of subject matter, and furthermore present a dossier that confirms his or her ability to do so. The kingdom of bilingual education is relatively nascent and consequently has not had enough time to nurture a hierarchy of professionals who are all encompassing in the classroom as well as on paper. Furthermore, the certification requirements, important as they are to the profession, do not properly recognize the need for native or very near-native fluency, nor do they readily compare with non-American dossiers or credentials that most native-speaking teachers from other countries have acquired. Thus, the long process of determining educational equivalents, detailing teaching experience abroad and translating dossiers can appear to be overwhelming for American directors and thereby force them to justify seeking the path of least resistance—the hiring of an American teacher, even though a suitable mechanism for evaluating that teacher's fluency in another language has not been established.

Instead of tracing the validity of foreign credentials and subsequently requesting emergency certification on the condition that a candidate follow an academic program that will enable him or her to join the ranks of certified American teachers, administrators who are often and quite

understandably uninformed as to the essentials of language acquisition and teaching choose to hire those who *may* be competent in this area. Unfortunately, there can be no substitute for native or near-native fluency combined with the experience of living in another culture. The demands of a bilingual curriculum dictate the presence of superior language competency. The usage and adaptation of foreign textbooks, plus the daily exigencie of detailed explanations and other matters such as translating and adapting items for measurement, parent/teacher conferences, fostering motivation, comforting troubled students, maintaining respect and discipline via the proper social amenities, and above all, representing a good linguistic and cultural model—all of these require a command of language and culture that transcends academic, cultural and racial barriers. It is not true that foreign born or native-speaking teachers are magically instilled with the talents needed to implement the above skills and duties, but it is true that native or very near-native fluency is acquired over a period of years and emanates from one who is a product of a linguistic and cultural experience. It appears to be more feasible to train someone with solid language background than one who has the theoretical and methodological know-how but who, after a crash course in the respective language, will still not be sufficiently competent to teach in a bilingual classroom.

In writing job specifications, directors must spell out a priority of qualifications and hold fast to them. The importance given to language ability, cultural awareness and teaching experience cannot be overstressed. Competency and professional status go hand-in-hand and should be the mark of all teachers. However, all competent personnel should have an opportunity to acquire professional status and simultaneously make a contribution to the educational process. For example, graduates of Portuguese normal schools, many with teaching experience in Portugal, have been hired to work in bilingual programs in Providence, Rhode Island. Granted emergency certification or sometimes hired as paraprofessional aides, they have pursued bachelor's and/or master's degrees in addition to receiving in-service training for teaching in bilingual/bicultural programs.

This type of staffing must not be interpreted as a threat to American teachers. Both foreign-language-speaking and English-speaking teachers are indispensable to bilingual schooling, but all teachers need "retooling" to become language teachers as well as subject matter instructors. Training in second language methodology, the philosophy of bilingual education and applied linguistics is necessary for all who participate in a bilingual program. It is expected that a Portuguese-born teacher, for example, would require study of the American curriculum, methods and materials as well as such specifics as diagnostic reading and testing, etc. Native English-speaking teachers for the same program would require experience with English language teaching materials, knowledge of the Portuguese language and value system as well as inter-cultural sensitivity.

A project requiring that *all* of its teachers be fully bilingually versatile so that they, language-wise, may be used interchangeably in any discipline with the same students, displays an embarrassing *naïvete* about language acquisition and teaching. While an accomplished coordinated bilingual person can switch language systems, a child learning to be bilingual in the atmosphere of a school cannot easily switch if his or her model embodies two languages and two cultures. This state of affairs applies particularly to the English-speaking child who has the opportunity to learn a second language only in school. Identity and acquisition of a language and culture can only be developed in a classroom situation if the association is consistent and relegated to an atmosphere which enhances communication in that one language. The possible outcome is a *salada mista,* or compound bilingual, one who cannot effectively separate two language systems. In order to avoid the intermingling and interference of language systems to a great extent, both teacher models must be present in a bilingual program. For the affective domain, this set-up can also nourish an awareness of the ethos of another people.

Training Courses for Bilingual Educators

Training personnel already immersed in meeting the demands of bilingual programs while regularly attending in-service courses may be exhausting, confusing, and at times, counter-productive. It is therefore preferable to institute *pre*-service programs and require contractually that teachers new to a bilingual program participate *prior* to assuming their classroom responsibilities.

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Cartoon by David Sipress

Though no *pre*-service course is a patent remedy for all the problems a teacher may later encounter, it can provide useful orientation for teachers new to bilingual education. Also, due to the *ad hoc* or less academically official aura of many in-service courses and workshops, teachers may interpret them as uneventful in comparison to their actual teaching assignments. In light of the above, it is recommended that director and trainer join forces to create a pre-service program that will be substantive, relevant to the teachers' school and program, and so scheduled as to allow everyone involved to devote most of his or her time and energy to the training curriculum.

The following suggestions and ideas regarding training programs stem from the philosophy of the Brown Bilingual Institute, which has been training teachers, curriculum writers, directors, principals, and paraprofessionals for the past five summers. Each participant arrives at the Institute with a teaching or school assignment, and is interviewed by an instructor in order to design a program of study to meet his or her individual needs. From a list of approximately fifteen courses, seminars, individual projects and discussion groups, a participant selects with a BBI staff member those areas of particular interest and need which will be most in tune with his or her duties during the school year. (For more detailed information about this training program write to the Brown Bilingual Institute, Box E, Brown University, Providence, Rhode Island 02912.)

In devising a training program, it is suggested that the framework of study carry the official status of university courses (i.e., official transcript credit) while catering on a very practical level to the specific needs of each participant. For example, in a course entitled "Evaluation and Construction of Specialized Language-Teaching Materials" teachers could study current and innovative bilingual materials as well as prepare their own materials with the assistance of curriculum writers and resource teachers. Instead of working in a theoretical vacuum, teachers should efficiently utilize their time with projects that will be of value to them in the upcoming school year. The structure of a training program, if too rigid, can inspire in teachers a humdrum, "credit" oriented attitude, rather than the kind of professional motivation which reflects dedication and self-improvement.

The structure, schedule and program of study in a pre-service training course must represent the articulated ideas and needs of participants at the administrative, teaching, and resource levels. In addition, the active in-put and cross-communication between these groups must be fostered. For instance, it would be valuable to have round-table discussions about issues of curriculum and student scheduling, such as the amount of time devoted to each language. This type of discussion should serve to involve teachers in policy-making, while developing a less distant

relationship with administrators. The teachers will then be able to articulately assist in disseminating policy to parents. A professionally sound program is one that creates an atmosphere and provides a process wherein the staff is encouraged to verbalize opinions, and to be responsible for its implementation and successes.

An invaluable resource for soliciting community action, support and interest is the hiring and training of bilingual paraprofessionals or aides from the school's neighborhood. The personal network of one-to-one communication, so vital in ethnic communities, can be used to enhance understanding and participation in the bilingual program. The talents and suggestions of paraprofessionals and community members should be respectively appraised and voiced. Moreover, delicate public policy issues such as integrated classrooms, cultural hostility, standard vs. dialect usage, social norms, the extensive use of the home language outside the classroom (in the corridors, main office, playground and lunchroom)—all these topics must be aired to diminish the tension that may surface when a bilingual program enters an established community school or is instituted in a school system. Frequently, new and innovative programs with impressive funding are not welcomed with open arms because members of the school or community have not been properly prepared, informed, or involved in the planning. Bilingual projects fall into this category because, despite the national movement for bilingual education, these programs still have to prove themselves amid the misconceptions and doubts about language that permeate our monolingually-oriented society.

Discussing and analyzing these issues must be a part of each teacher's training, in which interpersonal communication becomes the framework for dealing with the educational and social realities of daily school life. A training program that is strictly "subject" oriented is unrealistic and superfluous. Because bilingual education is such a relatively new field, public policy issues and the bilingual school should be an integral part of the staff's training. Again, this course of action assumes that there is verbal interaction or continuity between teachers, directors, principals, curriculum writers, community members, and trainers.

In another area, that of teacher and program supervision and evaluation, director and trainer can work closely to ensure the most efficient use of staff. This component should not be relegated to outside, "cardboard" evaluators who compile voluminous reports to superficially satisfy auditors, school boards, state and federal agencies. Unless we train staff and administrators to be astute and comfortable with evaluators who can and do make meaningful observations and comments, we will foster superficial and libelous programs. For example, teachers, principals or community members and parents may disagree with the language policy in a classroom but without a stated and *well-disseminated* philosophy and an evaluation of current practices, no one has recourse to any criticism or change. Although proposals spell out in specific but cumbersome and often boring behavioral terms a project's goals, very few individuals have access to this information. Those who wish to argue for curriculum change require knowledge of and practical training in the equitable channels through which they can voice their rights and opinions within the school system. This is often especially true of teachers who feel they are professionally vulnerable due to their certification status or the precariousness of their program.

Less than solid support of realistic training programs for bilingual education staff on the part of directors, school systems, or principals can jeopardize the dedication, altruism and enthusiasm found among most teachers and undermine the success of a bilingual/bicultural education program.

Degree Programs Needed

Most training programs follow the preservice and/or in-service workshop format, because time limitations and the rapid increase in the number of bilingual education programs have dictated an immediate need for staff preparation. Degree programs in bilingual education, at the bachelor's as well as master's and doctorate levels, are the most satisfactory response to the need for trained bilingual educators. Future teachers could follow a course of study in two languages to perfect their own language skills, as well as completing a relevant curriculum for bilingual pedagogy. Only a few such degree programs exist; more must be established soon if we are to pursue our commitment to the concept of high quality on-going bilingual/bicultural education.

FOX POINT: The History of a Portuguese Bilingual Program

by Laura Hersh Salganik

The Fox Point bilingual program in Providence, Rhode Island began in 1969, with the goal of educating students to be literate in two languages and to be comfortable in two cultures. Its six year history includes achievements in curriculum development, teacher recruitment and training, and student scheduling. The program has faced difficulties in incorporating citywide policies on desegregation and educational innovations into its programming, and in determining whether and how well it is meeting its own goals.

The Fox Point School serves a neighborhood where Portuguese people have lived for many years. Approximately half of its current population is foreign born. In most families, both parents work in local factories. Quota changes during the 1960's allowed many new immigrants to come to Fox Point from the Azores, and some from the Portuguese mainland. Ten percent of the school population is black; almost all the blacks are of Cape Verdean descent but are not immigrants, and do not know Portuguese.

The bilingual program was initiated by the Providence School Department as a response to the availability of ESEA Title VII funds and the feeling that the schools weren't meeting the needs of Portuguese students, whose drop-out rate was over 90%. A community advisory committee was formed when the program began, but remained relatively inactive. During the first year of the program classroom aides who lived in the neighborhood had to individually solicit permission from reluctant parents for students to participate in the program. It has now gained acceptance to the point that parents consider it the "standard" program for their children.

After the stipulated five-year funding period, the original ESEA Title VII grant expired last year and the bill for the program's elementary grades is now paid by city funds. The program has been extended into the middle school (grades 6-8) where it is funded by Title VII ESAA of 1973.

Anglos and Portuguese Learn Bilingually

Unlike programs whose goal is to ease the transition of non-English speaking students into regular classes, the Fox Point program was designed to provide instruction in the students' native language and culture even after they have mastered English. In addition, it was planned to include both students whose native language is English (designated as "Anglos" even though many are of Portuguese descent) and native Portuguese-speaking students. For each grade level there is a Portuguese class and an Anglo class in the bilingual program and one class not involved in the bilingual program. During the ESEA-funding period which expired in September, 1974, bilingual program students received most of their instruction in their native language. The amount of second language instruction increased from one hour per day in the lower grades to two in the upper grades, but students always had reading, arithmetic, and social studies instruction in their native language. For second language instruction the two classes switched teachers—Portuguese students went to the Anglo teacher and vice versa. In the upper grades there was some Portuguese and Anglo class mixing

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during social studies, especially to compare Portuguese and American life. Each class had a teacher and an aide.

This year, with the Providence School Department funding the program, there are fewer aides and significantly less Portuguese language instruction for Portuguese children in third, fourth, and fifth grades. One reason for this important change is that, in spite of the program's bilingual/bicultural—not assimilationist—structure, its goals were never formally written into guidelines for the future or evaluated. This is more indicative of weaknesses in educational goal setting and evaluation in general than of political pressure aimed at subverting the program.

In the past, the Fox Point program has escaped in admirable ways the pitfalls of the many hastily planned programs that have been started recently. All the teachers for the Portuguese classes are native Portuguese speakers. They were recruited for the program through announcements in the local Portuguese media. Most were born in Portugal or Cape Verde; many have college and graduate degrees from universities in Portugal, taught in Portugal, and received emergency certification until they completed the Rhode Island requirements. All the aides speak Portuguese. In addition, all the teachers, both Anglo and Portuguese, have attended at least one three-week summer session at the Brown University Bilingual Institute, which trains teachers for bilingual programs in Southern New England. Courses offered include principles of bilingual education, linguistics, Portuguese culture, advanced Portuguese, and bilingual curriculum development. The institute is directed by Dr. Nelson Vieira, assistant professor of Portuguese at Brown, who served as a consultant for program planning. While the elementary program was developing, he spent one day each week at the Fox Point school.

Staff members in addition to teachers were hired for development of Portuguese curriculum materials, and the school is now stocked with teacher-made workbooks as well as commercially produced materials from Portugal and Brazil.

Developers of the Fox Point program and its teachers have faced some important issues that are often ignored by bilingual educators and have reached a consensus about how to deal with them. On the issue of "standard" Portuguese and regional variations, teachers compare the differences to varieties of diction in English and feel students should be comfortable using both. They ask students to do their school writing with the standard forms, while not discouraging regional forms for informal speech.

On the issue of cultural differences in teaching styles, Portuguese and Anglo teachers have agreed that students should learn to function in both European and American style classrooms. In many Portuguese classes, teachers are more comfortable themselves with a relatively authoritarian style; Anglo teachers operate more informally. Including both styles is seen as one way to incorporate biculturalism into the school program.

Another activity to promote biculturalism is an annual Portuguese festival for the community. After a performance of traditional dances by the students, there is American dancing, movies of Portugal, and a Portuguese dinner.

Segregation became an issue when the first class to have completed the elementary bilingual program entered middle school in September, 1973. The middle school is 30% black and it adheres strictly to a policy of having every class 30% black. The bilingual program students were originally placed in classes only with other bilingual students. Portuguese and Anglos were mixed in classes and were taught in Portuguese one period per day (language, math and social studies for a third of the year each). In addition to violating school policy on racial composition of classes, the isolation from black students made it harder for the white Fox Point students to adjust to the middle school. It also isolated the few blacks in the bilingual program from other blacks in the school, a situation with which they were quite unhappy. This year the bilingual students are integrated into the regular school program and have one period per day with the Portuguese bilingual teacher for language instruction. Recognizing that it is a compromise, she feels the advantages of integrating the students into the school outweigh the disadvantages of forfeiting subject matter instruction in Portuguese. If the Portuguese students have a strong elementary background, she believes one period per day is sufficient to develop their bilingualism.

Evaluation of the Fox Point Program

One challenge that the Fox Point program

has not successfully met is that of formally evaluating whether it has lived up to its commitment to Portuguese language instruction and culture. Educational auditors from the Bernard Cohen Research and Development company, who reviewed the University of Rhode Island Curriculum Research and Development Center evaluation, generally approved of the work but pointed out that it did not include any specific evaluation of behavioral or general objectives. The URI evaluation is organized by instructional and management categories.

Most of the instructional evaluation is based on standardized reading tests in English. The primary instruments were the Murphy-Durrell Reading Readiness Test and the Gates MacGinitie Reading Tests. Since they are both in English and students in the same grade were given different levels of the Gates MacGinitie, it is difficult to make a comparative analysis of the data. In general, results show Portuguese students with slightly lower mean scores, but making the same gains per year as the Anglos. During the 1972-73 school year, a self-concept test not particularly geared to the bilingual program was given, and student gains reported. A teacher rating of second language acquisition had been used previously, but abandoned.

However, the evaluation does not report whether any of the students could read or write Portuguese, how much they knew about Portuguese culture or what their attitudes were about Portuguese language and culture. When asked about this, most teachers mentioned a lack of tests in Portuguese. Some had heard of attempts to develop new tests, and agreed that if it had been important to the school or the federal funders, Portuguese skills would have been evaluated.

Even though there is formal evaluation of only a limited range of students' skills, the program's staff and the parents do have other goals. When asked what they believe is the major purpose of the program, staff members cited minimizing culture shock, letting students continue their education without losing time because of language problems, teaching students to be literate in two languages, and giving students a positive attitude towards bilingualism and their Portuguese background.

In spite of the lack of hard data, most of the teachers believe the program has improved the school, and respect the importance of the students learning two languages. They believe the transfer of material learned in Portuguese to English has not been a problem for most students and that fifth grade Portuguese students can read English as well as their Anglo peers. The middle school bilingual teacher feels that the students' Portuguese language skills are good and that as adults, they will be able to read and write the language. Also, it is not uncommon for middle school Portuguese students who were not in the bilingual program to deny knowing Portuguese even to help other classmates, while those who have been in the bilingual program do not have this attitude and speak Portuguese freely in school.

Most teachers qualified their positive evaluation of the program with one problem, that some slower students do have trouble transferring from Portuguese to English. They are learning English much more slowly than their peers and are having difficulty reading.

The Consequences of Educational Innovation

The issue of how fast students learn English and the lack of specific definition of what constitutes bilingual education at Fox Point have led to major changes in the program this school year. The principal believes that many students – not just a few – are not learning English fast enough. She actively encourages them to speak English, not Portuguese, in school, since "they won't forget their Portuguese because they speak it at home."

Last year, the Providence School Department made a concentrated effort to have elementary schools adopt a new organizational structure utilizing team teaching and flexible grouping. Although it was supposed to be voluntary, school administrators did feel pressure to try the innovation. At Fox Point, it gave the principal an opportunity to reorganize the program to achieve her goal of more English instruction for Portuguese students.

This year, *all* students in third through fifth grades have language arts and reading in English. This means *all* teachers – Anglo and Portuguese – teach in English during that time. Instead of learning for two hours each day in English, Portuguese students now have only two hours a

day in Portuguese, for math, language, and culture. They learn social studies, science, and language arts in English.

The Portuguese teachers have little choice but to work within the new format. Some are unhappy about teaching in English themselves and about the reduced amount of Portuguese instruction their students are now receiving. The fact that the transition for students has been smooth can be cited as evidence that the students were progressing with one or two hours in English each day. In the fifth grade, about a quarter of the Portuguese students qualified for the top reading and language group in English.

It is not now clear whether the original bilingual/bicultural intent of the program will survive or it will become a plan to teach English to immigrants as quickly as possible. Parents have not objected to the new format of the program, although a casual survey revealed that one of their goals is for their children to learn two languages. Because the ESEA grant has expired, no further federally-funded evaluations of the Fox Point School program will be made and it now appears that a lack of specification of the program's original goals has left the door open for many changes. An active parent/community council monitoring the program could have helped to prevent such deviation from the original bilingual/bicultural ideals. However, the Portuguese community does not see direct involvement in curricular decisions as part of its role.

The history of the Fox Point program should make those now initiating bilingual programs aware of the possible consequences of not specifying and evaluating all their goals. It should also sensitize them to the interrelationships between goals of different policy areas and the challenge of setting a policy of bilingual education that will be incorporated into decisions on issues such as community involvement, segregation and educational innovations.

Photo by Edward Joyce, Courtesy of Education Development Center

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Recent Legal Developments in Bilingual/Bicultural Education

by Roger Rice

Efforts to secure quality bilingual/bicultural education through litigation were given encouragement by the decision of the United States Supreme Court in *Lau* v. *Nichols,* 414 U.S. 563 (1974). As previously discussed in *Inequality in Education* #16 (March 1974, p. 58) and #17 (June 1974, p. 64), *Lau* left open the question of what type of language programs were necessary to meet the requirements of Title VI of the 1964 Civil Rights Act. The purpose of this article is to summarize the status of bilingual/bicultural education litigation in the year since the *Lau* decision.

In general the experience in the four most developed cases—*Aspira* v. *Board of Education of the City of New York, Serna* v. *Portales Municipal Schools, Keyes* v. *School District No. 1* and *Lau* v. *Nichols*—points to the importance of thorough presentations of educational expertise in order to convince courts not to accept less than meaningful bilingual/bicultural programs for all students who need them. Experience also seems to indicate the willingness of at least some courts to use traditional equitable powers to fashion effective relief when presented with a convincing analysis of why plaintiffs preferred plan is superior to plans suggested by defendant school boards.

Equal Protection

In *Serna* v. *Portales Municipal Schools,* 351 F. Supp. 1279 (D.N.M., 1973) the court found an Equal Protection violation in the failure of the defendant to adopt an education program which would guarantee equal educational opportunity to Spanish-speaking children. The school district offered a plan designed to correct the constitutional deficiencies. The court rejected the school district's plan and instead adopted a plan of its own based on expert testimony adduced at a hearing on relief. The school district appealed, claiming not only that there was no underlying constitutional violation but also that the program it had suggested was sufficient to meet the educational needs of the Spanish-speaking children. The Court of Appeals followed *Lau* in finding a statutory violation of the students' Title VI rights. *Serna* v. *Portales Municipal Schools,* 499 F. 2d 1147 (10th Cir., 1974). The Court then went on to address the question of relief: "The evidence shows unequivocally that appellants had failed to provide appellees with a meaningful education. There was adequate evidence that appellants' proposed program was only a token plan that would not benefit appellees. Under these circumstances the trial court had a duty to fashion a program which would provide adequate relief for Spanish surnamed children." (Citing *Swann* v. *Charlotte-Mecklenburg Board of Education,* 402 U.S. 1 (1971). The court continued: Under Title VI of the Civil Rights Act of 1964 appellees have a right to bilingual education. And in following the spirit of Swann, *supra,* we believe the trial court under its inherent equitable power, can properly fashion a bilingual/bicultural program which will assure that Spanish surnamed children receive a meaningful education." 499 F. 2d 1154.

The willingness of the court of appeals to recognize a broad discretion in the district court in choosing among the educational programs offered provides the clearest support yet for those seeking meaningful bilingual/bicultural programs. The Court's reliance on language from school

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desegregation cases such as *Swann* and *Green* v. *School Board of New Kent. Co.,* 391 U.S. 430 (1968) indicates that school districts may be no more able to claim total discretion over the programmatic considerations involved in designing language programs than they are when the issue is one of desegregation. As the Supreme Court put it in *Green,* " . . . the availability to the board of other more promising courses of action may indicate a lack of good faith; and at the least it places a heavy burden upon the board to explain its preference for an apparently less effective method." 391 U.S. 437 at 440. In following this rationale the *Serna* court specifically rejected the contention of the New Mexico State Board of Education that the trial court's decision and relief constituted unwarranted and improper judicial interference in the internal affairs of the school district.

Desegregation with a Bilingual Plan

Undoubtedly the key element in the above strategy was the plaintiffs' ability to show that the district's plan was inadequate and that another more effective plan was available. In any event the Tenth Circuit will have another chance to review a bilingual education program when it hears the latest appeal in *Keyes* v. *School District No. 1,* the much litigated Denver school desegregation case. Following the decision of the United States Supreme Court in *Keyes* v. *School District No 1,* 413 U.S. 189 (1973), reh. denied, 413 U.S. 921 (1973), the district court took testimony on proposed school desegregation plans for the Denver public schools. Part of the testimony consisted of an extensive presentation on bilingual/bicultural education by the intervenors, Congress of Hispanic Educators. This testimony consisted in part of a presentation by noted educator Dr. Jose Cárdenas of an Education Plan for the Denver Public Schools, together with an addendum developed by local Hispanic educators in consultation with other minority community experts and lay people.

The district court commented that "the Cārdenas or bilingual/bicultural approach to the education of this minority group is a very sensible method and to the extent that it can be useful to building bridges between the Spanish and Anglo cultures, it is to be fully utilized." 380 F. Supp. 673, 692 (D. Colo. 1974) Thus the court ordered the implementation of the plan on a pilot basis in several predominantly Chicano schools during the 1974–75 school year with the long range goal of implementation throughout the district. The school district, joined by the Colorado State Department of Education, has asserted in its appeal that the trial court's order constitutes "an unwarranted intrusion into matters of educational policy and curriculum." The district seeks to distinguish *Lau* on the basis that unlike the Chinese speaking students in San Francisco, most of Denver's Chicano children speak English. The district further asserts that *Lau* was premised on the statutory violation and is no authority for a remedy in a school desegregation case resting solely on Fourteenth Amendment grounds.

Plaintiffs' Analysis Prevails

In *Aspira* v. *Board of Education of the City of New York, 58* F.R.D. *62* (S.D.N.Y. 1973) the court has accepted a consent decree calling for bilingual education for all New York City school children who need it beginning with a pilot program for the current school year. Among the elements of the decree are (a) a planned and systematic program designed to develop the child's ability to speak, understand, read and write English, (b) instruction in substantive courses in Spanish, (c) a planned and systematic program designed to reinforce and develop the child's use of Spanish. The decree makes clear that a child is not to receive instruction in any substantive course in a language which prevents effective participation in the course, and that intensive instruction in English should be scheduled for times other than the periods for substantive course work in Spanish. Once again the ability of the plaintiffs to point out the shortcomings of a school department submission seems to have been crucial to their ability to obtain the decree.

What follows demonstrates some of the loose jargon which school districts may claim satisfies *Lau* as well as an example of effective rebuttal. In *Aspira* the defendant board of education asserted that two of the key components of its plan were: (a) supplementary instruction in English with the objective of attaining early functioning competency in English; and (b) instruction in whatever combination of English and the native language is necessary to provide the

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Photo by Alan Borrud

student access to the material. In part this was the plaintiffs' response: "Supplementary instruction is given to the plaintiffs for a fraction of, or after, the school day. It is an attempt to compensate for the inadequate instruction given to them the rest of the school day . . . . By pulling the Spanish dominant child out from his class, and, by abandoning him to classes in which he cannot effectively participate for the greater part of the school day, the child becomes frustrated and suffers the consequences of poor instruction. . . . This approach is, at best, piecemeal, and in the course of attempting to learn English the child is inevitably locked out of participation in other instructional areas. To supplement or compensate for ineffective instruction during a fraction of the day could not presume to meet the requirements of equal educational opportunity . . . 'Access to material,' the second component in defendants' framework, is as ambiguous as 'adequacy in English.' For example, where the medium of instruction is English and where paraprofessionals, fellow students, or school aides interpret or reinforce instruction and materials to the Spanish-dominant child, defendants could assert that the child has 'access to material.' Clearly, however, that child would not be receiving the same benefits as his English-dominant counterpart." *Plaintiffs Reply Memorandum* in *Aspira, supra.*, at p. 10.

No Standards for Relief

As for *Lau* v. *Nichols* itself, the next chapter is being written by a coalition of community groups and educators who are taking the 1974-75 school year to plan an effective bilingual/bicultural program. If the school district agrees to the program then presumably a consent decree will be entered. If the district rejects the community's efforts then it is possible that the issue of adequacy of relief will be on its way back to the Supreme Court. Certainly that court hasn't foreclosed the issue from discussion. The Court noted that: "No specific remedy is urged upon us. . . Petitioner asks only that the Board of Education be directed to apply its expertise to the problem and rectify the situation." Thus the question of the appropriateness of relief would be reviewed by the Court only after the district court decided as to what kind of program was sufficiently effective "to rectify the situation." One potential problem here is that the *Lau* decision was based upon HEW's Title VI regulations and guidelines which have never spelled out standards for the sufficiency of language programs. Thus the Court might feel that it could not go beyond whatever expertise is reflected in HEW's published interpretations of Title VI. (Hopefully, of course, if it ever decides the issue the Court will follow the Tenth Circuit approach in *Serna).*

In any event, lawyers bringing future bilingual/bicultural litigation may want to consider the language of the new Equal Educational Opportunities Act of 1974. Section 204 of the Act states that: "No State shall deny equal educational opportunity to an individual on account of his or her race, color, sex, or national origin, by . . . (f) the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional program." Sec. 207 of the same act gives to individuals the right to bring suit in federal district courts to obtain relief for violations of Sec. 204. Other sections of the Act attempt to spell out priorities of remedies for courts to follow in desegregation cases. Thus, the failure to establish any similar priorities for denials of equal educational opportunity through language exclusion may be seen as Congressional indication that district courts have their usual remedial powers in dealing with that kind of equal educational denial. At any rate the Act gives an alternative to the Title VI route should it appear that that is desirable.

Notes and Commentary

This section of Inequality in Education *features reports on research, litigation, government action, and legislation concerning education and the law. Readers are invited to suggest or submit material for inclusion in this section.*

DESEGREGATION

BOSTON SCHOOL DESEGREGATION CASE

Morgan v. *Hennigan,* 379 F. Supp 410 (D. Mass., 1974); further orders dated August 9, 1974 (hiring and recruitment), September, 1974 (vocational education), October 4, 1974 (parent and student councils)

June 21 Opinion

In an opinion on June 21, 1974, District Judge W. Arthur Garrity, Jr., ruled that Boston school officials had:

> knowingly carried out a systematic program of segregation affecting all of the city's students, teachers and school facilities and ha[d] intentionally brought about and maintained a dual school system.

379 F. Supp. at 482.

The court found that student segregation resulted from a series of practices: facility utilization (*e.g.,* white schools overcrowded while black schools had space); adding of capacity (new schools, conversions of facilities to school use, placement of portables); transfer policies; districting; and feeder patterns (practices fixing movement of intermediate students to high schools). See 379 F. Supp. at 425–456. The court relied upon the system's failure to rebut the *"Keyes presumption"*[1] in finding intentional segregation in schools to which students were admitted based upon test scores and vocational programs. See 379 F. Supp. at 466–9. The court also found that the "defendants (had), with awareness of the racial segregation of Boston's neighborhoods, deliberately incorporated that segregation into the school system." In part, these actions "incorporated unconstitutional discrimination by other governmental officials." 379 F. Supp. at 470. The court detailed the system's adding of school capacity to serve racially segregated public housing projects. 379 F. Supp. at 471-3.

The court also found discrimination as to faculty and staff. In this area, the lengthy opinion details (a) the segregation of black faculty members, (b) discrimination in the employment of black teachers (by inappropriate use of scores on the National Teachers Exam) and administrators, and (c) the concentration of inexperienced teachers, and greater teacher turnover, in inner city schools. See 379 F. Supp. at 456–466.

Proceedings in state court, based upon the Massachusetts Racial Imbalance Act, paralleled the federal action. In October 1973, the Massachusetts Supreme Judicial Court ordered the Boston system to implement a partial desegregation plan in September 1974. In the June 21 opinion Judge Garrity, in effect, gave the state plan a second leg by ordering its implementation as a first step to student desegregation. 379 F. Supp. at 484.

Subsequent Orders

After the June 21 opinion, the court conducted numerous hearings on implementation and entered further orders. Rulings on teacher recruitment and hiring, vocational education and student and parent councils are worthy of mention.

Teacher Recruitment and Hiring—August 9, 1974

The court ordered the hiring of one black permanent teacher or provisional teacher for each white permanent or provisional teacher hired, until the lists of qualified black applicants were exhausted. Teachers were deemed qualified for pe

manent employment based upon state certification, as well as by satisfying an examination requirement imposed by the Boston system. To increase the pool of available black applicants, the court directed the system to appoint three black recruiters. These recruiters were authorized to offer employment to qualified black teachers, subject to later disapproval.[2]

Cooperative Vocational Programs—September, 1974

The cooperative course, a four-year program, includes in-school academic and vocational training, and on-the-job training for which a student is paid.[3] Minority enrollment has been small. The order required the system to offer positions to 7 minority students who were on the waiting lists of two programs. In addition, the system was ordered to notify a large number of minority students eligible to enter cooperative programs that vacancies occurring in the programs until January 1, 1975, would be filled with interested minority students.

Order Establishing Racial-Ethnic Councils—October 4, 1974

The order required the election of parent councils in all schools in which ten or more black and white pupils had enrolled. Student councils are to be elected in secondary schools. In schools where other minority students are concentrated, parents and students of these groups are represented. The purpose of the councils is "to insure adequate and impartial investigation and responsible recommendations on racially and ethnically oriented problems arising at the school; to create a means of communication . . .; and to promote an environment of understanding and common purpose . . ." A city-wide parents council is to be elected from the local councils.

(Copies of the orders may be secured from the Center For Law and Education.)

FOOTNOTES

[1] *Keyes* v. *School District No. 1, Denver,* 93 S. Ct. 2686, 2697 (1973) ("W)e hold that a finding of intentionally segregative school board actions in a meaningful portion of a school system, as in this case, creates a presumption that other segregated schooling within the system is not adventitious. It establishes, in other words, a *prima facie* case of unlawful segregative design on the part of school authorities, and shifts to those authorities the burden of proving that other segregated schools within the system are not also the result of intentionally segregative actions.")

[2] Recruiters of black teachers had not previously had authority to offer employment during recruitment trips. The court's ruling followed evidence that recruiters of native language speakers for bilingual programs had been given hiring authority.

[3] Courses include electricity, auto body, sheet metal, printing, machine shop, auto mechanics, cabinet making and upholstery.

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Editor's Note: On December 19, 1974, the Court of Appeals for the First Circuit unanimously affirmed all aspects of the district court's findings of *violation.* (Remedy issues were not ripe as of this appeal; they are almost certain to be raised in a later appeal.) A copy of the opinion may be secured from the Center For Law and Education.

SEGREGATION RULED *DE JURE* IN OXNARD

Soria v. *Oxnard School Dist. Board of Trustees* Civil #70–396–H. P., (CD Cal. Filed Dec. 10, 1974).

A recent decision by the United States District Court held that the Oxnard School District had intentionally segregated Chicano children. The decision was the third and final in this protracted litigation. In 1971, the District Court granted plaintiffs motion for summary judgment and ordered the implementation of a desegregation plan (328F.Supp. 155). The Ninth Circuit remanded, ordering hearings on the issue of intent [488 F 2nd 579 (9th Cir. 1973)] The Court, however, left the desegregation plan intact pending the trial on remand.

On remand, the District Court found that certain school board minutes confirmed its previous finding that the segregation in Oxnard was not adventitious. Previously the Court had found that (a) the placement of schools (b) the use of portable classrooms (c) the use of optional attendance zone (d) the reliance upon restrictive covenants and (e) the refusal to adopt reasonable plans to remedy racial isolation indicated that such racial isolation was intentional. The discovery of

certain school board minutes after the remand confirmed that inference.

The Court further held that Title VI (42 U.S.C. §2000d), as interpreted by *Lau* v. *Nichols* 414 U.S. 563 (1974), and as implemented by 45 C.F.R. §80 mandates affirmative steps by districts receiving federal funds irrespective of the cause or intent of the racial isolation.

The Court finally held that California decisions and administrative regulations mandate desegregation irrespective of cause, citing *Jackson* v. *Pasadena School Dist.* 59 Cal 2nd 876 (1963) and sections 14020 and 14021 of Title V of the California Administrative Code. The Court adopted this body of law under the doctrine of pendant jurisdiction.

The school district has apparently decided not to appeal this decision. Most persons seem quite satisfied with the results of the desegregation plan which has been in effect for approximately three years.

STUDENT RECORDS

THE FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT OF 1974

A new federal law titled the "Family Educational Rights and Privacy Act of 1974" provides important rights to parents and students regarding school records. Part of the Education Amendments of 1974, the new law provides for parental access to all school records directly related to their children and limits third party access to these records.

The parental right specifically includes access to intelligence, aptitude, and psychological tests, family background information, teacher and counselor ratings and observations, and other "confidential" information kept as an "unofficial" record by many schools. Sec. 438(a)(1). Written parental consent is required prior to the release of personally identifiable records to most other individuals, agencies or institutions. Sec. 438(b)(1). The exceptions to parental consent are obvious for the most part: release pursuant to a court order or lawful subpoena; to various local school officials; and to authorized state and federal officials wh need "anonymous" data for specified purpose Sec. 438(b)(1) (A–C). Parents have a right to hearing to challenge the content of their child school records, and for correction or deletion c data found to be incorrect, misleading or othe wise inappropriate. Sec. 438(a)(1). All rights a corded to the parents under the Act are accorde only to the student when he/she reaches eightee years of age. Sec. 438(d). Recipients of federa funds must inform parents of rights accorded b Section 438 (Sec. 438e) and must establish "ap propriate procedures for the granting of a reque by parents for access to their child's school record within a reasonable period of time, but in no cas more than forty-five days after the request ha been made." Sec. 438(a)(1). The Act is effective a of November 19, 1974.

Senator James Buckley (R–N.Y.), sponso of the original bill, and Senator Claiborne Pe (D–R.I.) have announced that they will offe amendments to clarify the scope of the new law Among the proposed changes will be clarificatio of terms such as "records" and "hearings," an how schools should handle recommendations an other materials submitted before enactment of th law with an understanding of confidentiality. The are, however, resisting pressure from a number o university officials to postpone the effective dat of the law. Thus, as of this writing, the law ha been in effect since November 19, 1974, wit schools allowed forty-five days in which to re spond to any requests to see records. It is hope that the proposed amendments will clarify some o the more controversial parts of the law before th deadline.

Caspar Weinberger, Secretary of the Depar ment of Health, Education and Welfare, has state that Department's firm support for the Fami Educational Rights and Privacy Act of 1974, an has appointed Thomas S. McFee to head a office (1) to handle inquiries from individua seeking information related to the protection the rights and privacy of parents and students, an (2) to serve as the focal point for investigati processing, and reviewing violations of the A Information requests can be addressed to M McFee, c/o Room 5660, HEW North, 330 In pendence Avenue, S.W., Washington, D.C., 202

In addition to the HEW enforcement me anism, at least two national groups plan

monitor implementation of the new law. The Children's Defense Fund is concerned about implementation in all states; violations can be reported to Ms. Linda Lipton (1763 R. Street, N.W., Washington, D.C., 20009; phone (202) 483-1470). Additionally, the National Committee for Citizens in Education has installed a toll free "hotline" (800-NET WORK) to gather national opinion on how well the Act is being enforced. Persons leaving their address at this number will receive information by mail, including a monitoring card on which parents/students can record their experiences when they ask to see their records.

The upcoming issue of *Inequality* will publish commentary on and the complete text of the Family Educational Rights and Privacy Act of 1974 and the new Massachusetts Regulations on student records. The Massachusetts Regulations will be included as one way to implement the rights provided by the new federal act, and more generally as a working model for persons and groups who are drafting similar regulations for elementary and secondary schools.

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Editor's Note: On December 19, 1974 Congress passed the amendments to the Family Educational Rights and Privacy Act which were offered by Senators Pell and Buckley (see *Congressional Record* of December 13, 1974, S21486–21491). President Ford signed the bill on December 31st. HEW regulations for the amended law are scheduled for publication in the *Federal Register* sometime in January 1975.

RIGHT TO LEARN

DAMAGE ACTION BY ILLITERATE HIGH SCHOOL GRADUATE DISMISSED

Doe v. *San Francisco Unified School District,* No. 653-312, Cal. Super. (1974)

Without a written opinion, the State Superior Court on November 14, 1974 dismissed *Peter Doe* v. *San Francisco Unified School District,* a damage action charging the public school district with negligence and educational malpractice in graduating an illiterate high school student. The court sustained the demurrer filed by the defendants which argued that the public school

Photo by Alan Bornud

district was immune from tort liability for the negligent or tortious conduct of employees with respect to 'academic' subjects. The school district argued that its tort liability was limited to the protection of students from physical harm and that to extend tort liability to negligent teaching in areas such as reading would render public education economically unfeasible. The district argued that the charges that the school district violated various statutory duties in their operation of the public schools, if true, did not give rise to a liability in damages for such violations. They further argued that an interest in learning to read was not cognizable under tort law. Finally, the district argued that it owed no duty to any individual students to teach them to read or learn any other particular subject.

In response, the plaintiff asserted that the school district, by compelling students to attend school under the State's compulsory attendance laws, had assumed the duty to exercise reasonable care in teaching and that a breach of the duty to exercise reasonable care was actionable. The argument was also made that the California governmental tort liability for educational negligence and without a specific exemption, defendant's claim of immunity was invalid. Plaintiff also argued that violation of mandatory duties under the Education Code gave rise to action in damages under specific California statutes and that a student's interest in learning how to read—an expectancy—was an interest cognizable under tort law.

Finally, the plaintiff argued that the action did not claim that the school district had an absolute duty to teach the plaintiff how to read, but, rather, it had a duty to exercise *reasonable care* in discharging its functions and the district and its employees had failed to observe an appropriate standard of care with respect to the plaintiff. Since the action was based upon the notion of fault—negligence—rather than strict liability, plaintiff asserted that defendant's claim of bankrupting the school system by actions from non-learners were meritless.

An appeal of the dismissal has been filed with the California Court of Appeals.

Susanne Mart.nez*

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EQUAL PROTECTION

PUERTO RICAN PARENTS FIGHT SPLIT-SESSIONS

Parents' Committee of Public School #19 Community School Board of Community Scho District #14, 74 Civ. 783 (E.D.N.Y. 1974)

A preliminary injunction against the di criminatory use of split-session classes was o tained by an association of Puerto Rican paren joint plaintiffs with other Puerto Rican paren and children suing individually. The complai alleged that the split-sessions at P.S. 19, a publ elementary school with a more than 95% Puer Rican student body, limit the plaintiffs to fo hours of daily instruction as opposed to the fi hours of daily instruction received by oth elementary students not attending split-sessio classes.

The court credited expert testimony that th effective loss of 20% of school time would wo irreparable damage to the language ability of th largely non-English-speaking children. Thus th court concluded that there was a very substanti probability that plaintiffs would eventually esta lish a cause of action based on both the Civ Rights Act of 1964, 42 U.S.C. §2000(d) and th Equal Protection Clause. As further support for i order the court noted that P.S. 19 had been o split-sessions longer than any other elementa school in the city, that recommendations to bui another school adjacent to P.S. 19 had be ignored, and that generally the white majori schools did not attend split-sessions.

The court left to the plaintiffs the option having P.S. 19 students sent to a different scho as a temporary measure for the current scho year, or alternatively to continue split-sessio with added special educational programs. T court also ordered that four additional teachers provided for educational work with children w had been disadvantaged by past years of spl sessions and that the defendants submit a plan f additional assistance to the P.S. 19 students.